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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 425

SEABOARD AIR LINE RAILROAD COMPANY, ATLANTIC COAST LINE RAILROAD COMPANY, et al.,

Appellants

v.

UNITED STATES OF AMERICA, FLORIDA EAST COAST RAILWAY COMPANY, et al.,

Appellees

On Appeal from the United States District Court for the Middle District of Florida

JURISDICTIONAL STATEMENT

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INDEX

JURISDICTIONAL STATEMENT

	Page
OPINIONS BELOW	2
JURISDICTION	2
STATUTES INVOLVED	3
QUESTION PRESENTED	4
STATEMENT OF THE CASE	5
Proceedings before the Commission	5
Proceedings in the District Court	11
THE QUESTION IS SUBSTANTIAL	13
CONCLUSION	30

APPENDICES TO JURISDICTIONAL STATEMENT
VOLUME I

APPENDIX A—Opinion and Final Judgment of the District Court	1
APPENDIX B—Order dated December 2, 1963, of Interstate Commerce Commission Approving the Merger	21
APPENDIX C—Order dated March 4, 1964, of Interstate Commerce Commission Approving the Merger and Denying Petitions for Reconsideration	25
APPENDIX D—Statutes Involved	29

APPENDICES TO JURISDICTIONAL STATEMENT
VOLUME II

APPENDIX E—Report and Recommended Order of Interstate Commerce Commission Examiner	1

TABLE OF CASES

Page

Brotherhood of Maintenance of Way Employees v. United States, 366 U.S. 169 (1961) 3, 14

Brown Shoe Co. v. United States, 370 U.S. 294 (1952) 12, 18, 21, 26, 27

County of Marin v. United States, 356 U.S. 412 (1958) 14

Indiana Farmer's Guide Publishing Co. v. Prairie Farmer Publishing Co., 293 U.S. 268 (1934) 22

International Boxing Club v. United States, 358 U.S. 242 (1959) 22

I.C.C. v. Baltimore & O. R. Co., 152 ICC 721 (1929) 20

I.C.C. v. Baltimore & O. R. Co., 160 ICC 785 (1930) 20

I.C.C. v. Pennsylvania R. Co., 169 ICC 618 (1930) reversed on other grounds in 66 F. 2nd 37 (3 D. Cir. 1933) 20

McLean Trucking Co. v. United States, 321 U.S. 67 (1944) 3, 12, 16, 18, 20, 22, 23, 24, 27

Minneapolis & St. L. R. Co. v. United States, 361 U.S. 173 (1959) 3, 12, 17, 18, 20, 21, 22, 23, 24, 27

Northeastern Securities Company v. United States, 193 U.S. 197 (1904) 14

Schwabacher v. United States, 334 U.S. 182 (1948) 14

Seaboard Air Line R. Co.—Merger—Atlantic Coast Line R. Co., 320 ICC 122 (1963) 2

Standard Oil Co. v. United States, 221 U.S. 1(1911) 22

Standard Oil Co. v. United States, 337 U.S. 293 (1949) 22

Page

Times-Picayune Co. v. United States,
345 U.S. 594 (1953) 22

Transamerica Corp. v. Board of Governors,
206 F. 2d 163 (3 D. Cir. 1963), cert. denied,
346 U.S. 901 (1963) 20

United States v. Bethlehem Steel Corp.,
168 F. Supp. 576 (S.D.N.Y. 1958) 21

United States v. Columbia Steel Co.,
334 U.S. 495 (1948) 22

United States v. DuPont & Co.,
353 U.S. 586 (1957) 21

United States v. Lehigh Valley R. Co.,
254 U.S. 255 (1920) 14

United States v. Paramount Pictures, Inc.,
334 U.S. 131 (1948) 22

United States v. Philadelphia National Bank,
374 U.S. 321 (1963) 26

United States v. Reading Co.,
253 U.S. 26 (1920) 14

United States v. Union Pacific R. Co.,
226 U.S. 61 (1912) 14

United States v. Yellow Cab Co.,
332 U.S. 218 (1947) 22

Van Camp & Sons v. American Can Co.,
278 U.S. 245 (1929) 22

STATUTES CITED

49 U.S.C., preceding §1 (National Transportation Policy) 4, 24
49 U.S.C. §1, et seq (Interstate Commerce Act) 14, 16
5 ..... 3, 13, 14, 18, 20,
5(2) 2, 4, 5, 13, 14, 15, 16, 18, 19, 21, 22, 23, 24, 25, 26, 27, 29

	Page
5(2)(a)	4, 14
5(2)(b)	4, 15, 23, 24
5(2)(c)	4, 15, 23
5(2)(f)	4
5(3)	4, 29
5(7)	19
5(11)	4, 14, 15, 20, 23
15 U.S.C. §1 et seq. (Sherman Act)	12, 16, 17
15 U.S.C. §12 et seq. (Clayton Act)	12, 13
18	4, 12, 17, 19, 20, 21, 25, 27, 28, 29
21	4
25	19
Judicial Code, 28 U.S.C.	
Section 1253	3
Federal Aviation Act, 49 U.C.S.	
Section 1378	23
Section 1384	23

MISCELLANEOUS CITED

United States Supreme Court Rule 13	1
United States Supreme Court Rule 15	1
54 Stat. 905	2
54 Stat. 908	4
54 Stat. 899	4
38 Stat. 731, 734	4
64 Stat. 1125	4
26 Stat. 209	17
41 Stat. 481	14
41 Stat. 482	14
48 Stat. 217	20
38 Stat. 736	19
Transportation Act of 1920	13, 14, 19
Transportation Act of 1940	14, 19, 23
ICC FD 21478	13
ICC FD 21989	13
79 Cong. Rec. 12,207	17
Celler-Kefauver Act	17

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Appellants,

v.

UNITED STATES OF AMERICA, FLORIDA EAST COAST RAILWAY COMPANY, *et al.*,

Appellees.

On Appeal from the United States District Court for the Middle District of Florida

JURISDICTIONAL STATEMENT

Seaboard Air Line Railroad Company, Atlantic Coast Line Railroad Company, The Atlantic Coast Line Company, and Mercantile-Safe Deposit and Trust Company, Appellants, appeal from the judgment of the United States District Court for the Middle District of Florida entered May 13, 1965, setting aside certain orders of the Interstate Commerce Commission dated December 2, 1963, and March 4, 1964, which authorized a merger of Atlantic Coast Line Railroad Company into Seaboard Air Line Railroad Company, and submit this statement, in compliance with Rules 13 and 15 of this Court, to show that the Supreme Court of the United States has juris-

diction of the appeal and that the questions presented are substantial.

OPINIONS BELOW

The opinion of the three-judge District Court entered on May 13, 1965, is not yet reported. Copies of that opinion and of the judgment of the District Court of the same date are attached as Appendix A, App. vol. I, pp. 1-18 and 19-20, respectively. The orders of the Interstate Commerce Commission dated December 2, 1963, and March 4, 1964, set aside by the District Court, are attached as Appendices B and C, App. vol. I, pp. 21-23 and 24-27. The report of the Interstate Commerce Commission approving the merger, *Seaboard Air Line R. Co.—Merger—Atlantic Coast Line R. Co.*, appears at 320 I.C.C. 122 (1963). Copies of this report have been furnished for the convenience of the Court. The report of the Commission's Hearing Examiner, incorporated by order of the Commission in its own report, is attached as Appendix E, App. vol. II.

JURISDICTION

This is an action by Florida East Coast Railway Company to set aside orders of the Interstate Commerce Commission (the "Commission") entered under Section 5(2) of the Interstate Commerce Act, 54 Stat. 905, 49 U.S.C. §5(2), approving and authorizing the merger of Atlantic Coast Line Railroad Company into Seaboard Air Line Railroad Company, subject to certain conditions specified in the Commission's orders. The Railway Labor Executives' Association, and the Southern Railway Company and its affiliated companies in the Southern Railway System, intervened as parties plaintiff. The defendant Interstate Commerce Commission, represented by its General Counsel, appeared in support of its orders; the defendant United States of America, represented by the Department of Justice, appeared in opposition to the orders and was realigned

as a party plaintiff. Seaboard Air Line Railroad Company, Atlantic Coast Line Railroad Company, and The Atlantic Coast Line Company, a holding company controlling Atlantic Coast Line Railroad Company, and the Mercantile-Safe Deposit and Trust Company, a trust company which in turn, as fiduciary, controls The Atlantic Coast Line Company, intervened as parties defendant.[1]

The judgment of the court below was dated and entered on May 13, 1965. Notices of Appeal were filed in that court by these appellants on June 9, 1965, and by the Interstate Commerce Commission on July 12, 1965. The jurisdiction of this Court is established by 28 U.S.C. §1253.

The following decisions, among others, sustain the jurisdiction of this Court to review the judgment of the District Court on direct appeal: *Brotherhood of Maintenance of Way Employes* v. *United States,* 366 U.S. 169 (1961); *Minneapolis & St. L. R. Co.* v. *United States,* 361 U.S. 173 (1959); and *McLean Trucking Co.* v. *United States,* 321 U.S. 67 (1944).

STATUTES INVOLVED

The statutory provisions governing the approval by the Interstate Commerce Commission of the consolidation and merger of railroads are contained in Section 5 of the Interstate

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[1]Short name forms will sometimes be used herein as follows:

Coast Line	—Atlantic Coast Line Railroad Company
Commission or ICC	—The Interstate Commerce Commission
Florida East Coast	—Florida East Coast Railway Company
Mercantile	—Mercantile-Safe Deposit and Trust Company
Merged Company	—Seaboard Coast Line Railroad Company, the surviving corporation under the Plan of Merger
RLEA	—Railway Labor Executives' Association
Seaboard	—Seaboard Air Line Railroad Company
Southern	—Collectively: Southern Railway Company, The Alabama Great Southern Railroad Company, The Cincinnati, New Orleans and Texas Pacific

Commerce Act, subparagraphs (2)(a), (2)(b), (2)(c), (2)(f), and (11), 54 Stat. 905, 908, 49 U.S.C. §5(2)(a), (2)(b), (2)(c), (2)(f) and (11), and in the National Transportation Policy, 54 Stat. 899, 49 U.S.C. preceding Section 1. The provisions of the antitrust laws relied on by the District Court are contained in Sections 7 and 11 of the Clayton Act, 38 Stat. 731, 734, 64 Stat. 1125, 15 U.S.C. §§18 and 21. The texts of these and other pertinent statutory provisions are set forth in Appendix D, App. vol. I, pp. 32-39, and 29-32, respectively.

QUESTION PRESENTED

The question now presented is:

Did the court below err in setting aside the orders of the Commission which authorized the merger of Coast Line into Seaboard, on the ground that the Commission, in performing its statutory duty to determine whether such a merger is consistent with the public interest under Section 5(2) of the Interstate Commerce Act is required to make findings in specific conformity with those which would have been required if Section 7 of the Clayton Act were applicable, and that the Commission failed to make those findings?

If probable jurisdiction is noted, the following additional questions will be presented:

(a) Was not the Commission's finding that Mercantile, under the circumstances of the case, need not be considered as a carrier under Section 5(3) of the Interstate Commerce Act in order to give the Commission adequate administrative control over Mercantile's relationship to the merged carrier, within its lawful discretion? and;

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[1](continued) Railway Company, New Orleans and Northeastern Railroad Company, Georgia Southern and Florida Railway Company, Carolina and Northwestern Railroad Company, Central of Georgia Railway Company and Savannah & Atlantic Railway Company.

(b) Were not the conditions imposed by the Commission on the merged company to protect the interest of railroad employees affected by the merger in accordance with and adequate under the statute? and;

(c) In view of the full record on these matters and the manifest correctness of the Commission's rulings on them, despite the failure of the court below to pass on them, should not the judgment below be reversed with instructions to dismiss the complaint, and the orders of the Commission be reinstated?

STATEMENT OF THE CASE

Seaboard and Coast Line are interstate railroads. Each operates only in the six states of Virginia, North Carolina, South Carolina, Georgia, Alabama and Florida.

In May, 1960, the Boards of Directors of Seaboard and of Coast Line agreed to a Plan of Merger for the merger of Coast Line into Seaboard, which would be the surviving corporation under the name of Seaboard Coast Line Railroad Company. The Plan was thereafter overwhelmingly approved by the stockholders of each company.

Proceedings Before the Commission. – Seaboard and Coast Line jointly applied to the Commission in July, 1960, for authority to merge pursuant to Section 5(2) of the Interstate Commerce Act. Eighty-six parties who filed 166 pleadings participated in the extensive ensuing proceedings before the Commission. Hearings were held before an Examiner of the Commission in seven cities in the Southeast on 35 hearing days between November, 1960, and July, 1961. The record of those hearings contains 5,729 pages of reporter's transcript, 101 prepared testimony statements containing 1,221 pages, and 271 documentary exhibits.

More than a year after the close of the hearings, and after receiving briefs, the Commission's Examiner, on August 24, 1962, issued an extensive report and recommended order approving the merger upon certain prescribed conditions. (Appendix E, App. vol. II, pp. 226-32). Exceptions and replies were filed with the Commission by various of the parties.

On May 7 and 8, 1963, the case was argued orally before the full Commission. On December 13, 1963, the Commission issued and served an exhaustive report,[2] dated December 2, 1963, setting forth in detail the Commission's reasons for approving the proposed merger. The Commission's order, two Commissioners dissenting, approved the merger subject to certain specified conditions.

The Commission's report, among the other public interest factors,[3] extensively analyzed the competitive factors inherent in the proposed merger, recognizing at the outset of its discussion the obvious fact that: "The proposed merger would result in the elimination of present competition between Seaboard and Coast Line in a 6-state area," (320 I.C.C. at 163). The Commission proceeded to a full analysis of the "intramodal" (rail) competition as it would be affected by the merger. First, it analyzed the quantum of the total tonnage of the two roads that was competitive between them and the portion of that tonnage that would remain subject to competition from other rail carriers after the merger.[4] The Commission observed that,

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[2]In printed form the Commission's report itself covers 148 pages, and the report of the Examiner, which it incorporates by reference, in the form in which we have printed it in the Appendix, covers 268 pages, including appendices.

[3]In addition to considering the public interest factors, the Commission, among other matters, passed on the fairness of the exchange of securities provided for by the Plan of Merger and authorized the issuance of the new securities of the merged company.

[4]The Commission noted that 33.4% of the total tonnage of Seaboard and Coast Line was competitive between them. Of this competitive portion of the two railroads' tonnage, over 65% would remain competitive with other railroads after the merger. (320 I.C.C., at 211)

in terms of points where the merging roads had agents, "there would be only 17 communities outside of Florida which would be without competitive rail service after the merger, and these communities have an average population of approximately 6,500 each." (320 I.C.C, at 164)

The Commission noted that: "Though the merged company will be the biggest railroad in the area, whether measured in terms of revenues, or assets or mileage, it will encounter vigorous competition from other rail carriers. The record here shows that rail competition will exist at every major city with a population in excess of 200,000 except at Tampa." (320 I.C.C., at 164) The Commission further noted that the situation at Tampa and in central and western Florida generally was unique since those areas were served by no other railroads besides those proposing to merge. However, in this connection, the Commission analyzed the peculiarities of the Florida situation in that in terms of points at which Seaboard and Coast Line had maintained agents "the number of Florida points at which there has been no competition [between the two carriers] is about 4 times as great as the number of Florida points at which Seaboard and Coast Line have heretofore competed." (320 I.C.C., at 165)

Observing that: "The impact of this merger, both good and bad, will be felt throughout the southern region and in evaluating its competitive advantages and disadvantages, we must consider the rail service provided by all rail carriers and, in fact, the sum of all of the competitive transportation facilities that will remain available in this broad area" (320 I.C.C., at 166), the Commission proceeded to analyze the competitive effects of the merger in terms of both "intramodal competition" (competition between rail carriers) and in terms of competition with transportation provided by competing forms of carriage.

The Commission's analysis was both in terms of the effect of the merger directly on users of transportation services and

in terms of the effect on other rail carriers. On the latter point, the Commission exhaustively analyzed the claims of diversion of traffic that were made by the various parties before it. The Commission used its administrative powers to balance the competitive situation with respect to the Southern – the principal rail competitor of Seaboard and Coast Line – with particular reference to the origination of traffic that would exist in central and western Florida,[5] where the merger's effects on intramodal competition were obviously most pronounced. The Commission recognized that tariffs presently in effect prevent routing over Southern's lines north of Jacksonville on traffic to and from Florida points on Seaboard and Coast Line (320 I.C.C., at 182). The Commission accordingly ordered the merged company to establish, in conjunction with Southern, joint rates in connection with traffic through the Jacksonville gateway.[6] These rates were to be no higher than the rates applicable over the lines of the merged company itself through the Jacksonville gateway, or via any other gateway. The Commission stated that this condition would make Southern "fully competitive with the merged company with respect to northbound traffic out of Jacksonville." (ibid.) Certain other conditions were imposed to insure the ability of

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[5]Southern's operations in Florida do not extend south of Jacksonville and Palatka which are, of course, in the northeast corner of the state.

[6]Thus, even though prior to the merger, shipments originating in central or western Florida—which would have originated almost exclusively over the lines of either Seaboard or Coast Line—would not have moved north of Jacksonville via Southern, this routing would, under the Commission's condition, become available after the merger. Not only would Southern continue to afford effective competition to the merged company in Virginia, the Carolinas, Georgia and Alabama, but it would become for the first time an important factor in northbound shipments moving from central and west Florida.

other rail carriers to compete effectively with the merged carrier.[7]

The Commission stated that it expected "positive results to flow from consummation of this merger subject to the described conditions." The Commission stressed, "it is important to note that the conditions we have devised represent neither mere acceptance of the minimum concessions offered by the applicants nor full acquiescence in the demands of the intervening rail-

[7]Thus, in order to ensure the maintenance of balanced competition after the merger:

(a) The merged company was required to give the Central of Georgia (a Southern affiliate) trackage rights over the present line of Coast Line from Albany to Tifton, Georgia. This would give Central of Georgia and Southern a continuous route from Birmingham and Montgomery to Jacksonville, and when considered with the condition opening the Jacksonville gateway, the Commission concluded, would not only "be particularly beneficial to Southern and Central" but "also provide a significant volume of interchange trackage for [Florida] East Coast at the Jacksonville gateway." (320 I.C.C., at 183) (Condition 12)

(b) The Coast Line and Seaboard each operate a line between Jacksonville and Quinlan, Florida, an industrial area which includes a large plant of the St. Regis Paper Company. St. Regis and Southern, in order to keep service at Quinlan competitive, requested that the merged carrier be required to sell or lease one of the two lines to Southern, and the Commission imposed this condition. (Condition 11)

(c) The merged carrier was required by the Commission to open new routes with the Norfolk Southern Railway, an east-west carrier operating primarily in Southern Virginia and North Carolina. The merged carrier was ordered to open new routes and maintain joint routes with Norfolk Southern through the Wilson, N. C., Fayetteville, N. C., and Raleigh, N. C., gateways. (Condition 7)

In addition, among other conditions, there were imposed on the merged carrier general traffic conditions ordering the maintenance of all routes and channels of trade via existing junctions and gateways; ordering preservation of neutrality in handling traffic; ordering preservation of present traffic and operating relationships with connecting lines; imposing an obligation to handle the cars of other lines without discrimination; prohibiting interference with the right of industries to select their own routing for traffic; ordering the maintenance of existing freight train schedules, so as to preserve connections with other railroads; and allowing Southern to abandon certain trackage agreements with the merged carrier which might prove to be burdensome to it. (Conditions 1, 2, 3, 4, 5, 6, 9 and 10)

roads, but rather are the product of our exhaustive study of the competitive situation in the Southeast. We are convinced that these routing and gateway conditions will establish two balanced competitive systems in that area and will result in an increase rather than decrease in intramodal rail competition that will contribute to the present and future economic development of this important section of the Nation." (320 I.C.C., at 188)

The principal affirmative factor that the Commission discussed was the well-known competitive growth of modes of transportation other than railroads and its impact on the rail carriers and their ability to serve the public in an efficient and adequate manner. The Commission analyzed the increasing competition, both in terms of passenger transportation and freight transportation, in the southeastern United States, provided by motor, airline, water and pipeline carriers. The Commission gave particular attention to the growth of competitive transportation services available in Florida, and particularly in the Tampa area. Against this backdrop, the Commission noted the declining income of Seaboard and of Coast Line, and the problems associated with their increased operating costs and the problem of their excess "plant" capacity. The Commission reviewed the economies—so relevant to modern, efficient service—to flow from the merger. Meticulously analyzing and to a considerable extent discounting the estimates of economies made by the merger applicants, it nonetheless concluded "that the total savings will be substantial and will approximate our estimate of at least $20 million a year." (320 I.C.C. at 159) The Commission concluded that: "In the light of these and other factors, particularly the accelerated growth of external competition, it is evident that, following the merger, there will be greater assurance of the ability of these railroads to provide efficient, adequate, and improved service to the public in the future." (320 I.C.C., at 153)

Accordingly, the Commission reached a conclusion that: "[I]t is clear that the benefits of this merger, when viewed in the light of the conditions hereinafter imposed, will greatly outweigh the potential injuries and hence the policy underlying the antitrust laws does not represent a barrier to its approval." (320 I.C.C., at 167)

After the receipt of various petitions for reconsideration, the Commission, in an order modifying one of the routing and gateway conditions, denied reconsideration on March 4, 1964. (Appendix C, App. vol. I, pp. 25-27.)

Proceedings in the District Court. — On March 18, 1964, Florida East Coast filed a complaint in the court below to set aside the Commission's orders, and a temporary restraining order issued. Southern and RLEA were granted leave to intervene as plaintiffs; and the Justice Department, answering for the statutory defendant United States, aligned as a plaintiff. Appellants were granted leave to intervene as defendants.

On May 13, 1965, the District Court entered an opinion and judgment setting aside the orders of the Commission.

The decisive factor of the court's opinion was its acceptance of the contention of Florida East Coast that, as a first step in making its determination as to whether the merger should be approved—in the court's words — "the Commission must define the 'line of commerce' and 'section of the Country' in which to appraise the probable competitive effects of the proposed merger and must determine whether the effect of the merger 'may be substantially to lessen competition' or 'tend to create a monoply'." Appendix A, App. vol. I, p. 12.[8]

The District Court admitted that: "On its face this contention may seem contrary to the Supreme Court's decision in

[8]The specified tests are those laid down in Section 7 of the Clayton Act.

McLean Trucking Co. v. *United States*" (321 U.S. 67 (1944)). As the District Court put it: "*McLean* involved the Commission's approval of the consolidation of seven large motor carriers . . . The Court decided that the Commission is not required to decide definitely whether the transaction violates the Sherman Act, but that the Commission's role is to 'estimate the scope and appraise the effects of the curtailment of competition which will result from the proposed consolidation and consider them along with the advantages of improved service, safer operation, lower costs, etc., to determine whether the consolidation will assist in effectuating the over-all transportation policy'." (Appendix A, App. vol I, p. 7)

However, the District Court then proceeded to distinguish *McLean* on the ground that the challenge to the Commission's decision in that case was made solely on the basis of the Sherman Act, not the Clayton Act.

The District Court then confronted this Court's decision in *Minneapolis & St. L. R. Co.* v. *United States,* 361 U.S. 173 (1959), and admitted that in that case "which considered both the Sherman Act and section 7 of the Clayton Act, the Supreme Court did not expressly direct the Commission to define the relevant market by delineating a service market and a geographical market." The District Court disposed of this difficulty by observing: "However, that case was decided prior to *Brown Shoe Co.* v. *United States,* 1962, 370 U.S. 294." (Appendix A, App. vol. I, pp. 10-11).

Thus, the court below held that this Court's decisions in *McLean* and *Minneapolis* were not governing because the Clayton Act is said to be involved in this case and because of the intervening decision in the *Brown Shoe* case. Following this holding, because the Commission had not phrased its conclusions in terms of the specific standards applicable under Section 7 of the Clayton Act—and for no other reason—the court below

set aside the Commission's order on the grounds that it "failed to make sufficient findings to accommodate section 5(2) of the Interstate Commerce Act with section 7 of the Clayton Act." (Appendix A, App. vol. I, p. 12).

THE QUESTION IS SUBSTANTIAL

In the present case[9] – the District Court took the extraordinary step of determining that the two leading cases of this Court relating to the applicable standards for ICC approval of carrier mergers under Section 5 of the Interstate Commerce Act are no longer controlling.

Such an extraordinary assumption by the District Court would in itself obviously be a ground for plenary review on appeal by this Court. In point of fact, moreover, the ruling of the District Court is plainly erroneous, and unless reviewed and reversed by this Court will cause interminable delays in the various important railroad merger cases now pending before the Commission.[10]

It is conceded by the District Court that neither the Sherman Act nor Section 7 of the Clayton Act is binding on the Commission in its consideration of whether to approve a merger between carriers under Section 5(2) of the Interstate Commerce Act. The basic legislative history makes this plain. In the Transportation Act of 1920–in which the first version of Section 5(2) came into the statute – Congress directed the Commission to "prepare and adopt a plan for the consolidation of

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[9]Appendix A, App. vol. I.

[10]For example, the Pennsylvania-New York Central Merger (ICC Finance Docket 21989, etc.) which is awaiting argument before the Commission on the Examiner's report of February 26, 1965 and the Great Northern-Northern Pacific-Burlington Merger (ICC F.D. 21478, etc.) which was argued before the Commission on June 16-17, 1965, and is now awaiting decision by the Commission.

the railway properties of the continental United States into a limited number of systems." 41 Stat. 481. The antitrust laws, which previously had been applicable in plenary fashion to mergers between rail carriers,[11] were superseded in the case of mergers approved by the Commission.[12]

The Commission was unable to formulate and put its administrative master plan into effect during the 1920's and 1930's, and by 1940 it was obvious, as this Court put it, that "the ambitious nation-wide plan of consolidation was not bearing fruit," and "that it was a case where the best was an enemy of the good, and waiting for the perfect official plan was defeating or postponing less ambitious but more attainable voluntary improvements." *Schwabacher* v. *United States*, 334 U.S. 182, 193 (1948). Accordingly, Congress provided, in the Transportation Act of 1940, a new scheme dealing with the desired end of consolidating the country's rail systems—the present Section 5(2). This provision relieved the Commission of its duty to promulgate a master plan, but instead authorized and directed the Commission to approve carrier-instituted voluntary plans of merger if the plans meet certain tests laid down in the statute. Congress' purpose was plain; as this Court has reiterated: "The congressional purpose in the sweeping revision of §5 of the Interstate Commerce Act in 1940, enacting §5(2)(a) in its present form, was to facilitate merger and consolidation in the national transportation system." *County of Marin* v. *United States*, 356 U.S. 412, 416-18 (1958); *Brotherhood of Maintenance of Way Employes* v. *United States*, 366 U.S. 169, 173 (1961).

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[11] See e.g., *Northern Securities Company* v. *United States*, 193 U.S. 197 (1904); *United States* v. *Union Pacific R. Co.*, 226 U.S. 61 (1912); *United States* v. *Reading Co.*, 253 U.S. 26 (1920); *United States* v. *Lehigh Valley R. Co.*, 254 U.S. 255 (1920).

[12] The 1920 Act brought the provisions of Section 5(11), then numbered Section 5(8), into the Act. 41 Stat. 482.

Section 5(2) of the Act is explicit. Subdivision (a) provides that: "It shall be lawful, with the approval and authorization of the Commission . . . for two or more carriers to consolidate or merge their properties or franchises . . ."

Subdivision (b) ordains that if the Commission "finds that, subject to such terms and conditions and such modifications as it shall find to be just and reasonable, the proposed transaction . . . will be consistent with the public interest, it shall enter an order approving and authorizing such transaction, upon the terms and conditions, and with the modifications, so found to be just and reasonable . . ." And subdivision (c) articulates standards which the Commission is to take into account in determining whether the proposed merger would be consistent with the public interest: "In passing upon any proposed transaction under the provisions of this paragraph (2), the Commission shall give weight to the following considerations, among others: (1) The effect of the proposed transactions upon adequate transportation service to the public; (2) the effect upon the public interest of the inclusion, or failure to include, other railroads in the territory involved in the proposed transaction; (3) the total fixed charges resulting from the proposed transaction; and (4) the interest of the carrier employees affected."

Paragraph (11) of Section 5 is equally explicit as to the consequences of the exercise of the Commission's authority to approve these carrier mergers. That provision declares that: "The authority conferred by this section shall be exclusive and plenary, . . . and any carriers or other corporations, and their officers and employees and any other persons, participating in a transaction approved or authorized under the provisions of this section shall be and they are relieved from the operation of the anti-trust laws and of all other restraints, limitations, and prohibitions of law, Federal, State, or municipal, insofar as may be necessary to enable them to carry into effect the transaction so approved . . ."

This Court, applying the provisions of Section 5(2) added by the 1940 Act, early rejected a contention that the Commission, in considering approval of a merger between competing carriers under Section 5(2), was required to apply the Antitrust laws, specifically the Sherman Act. *McLean Trucking Co.* v. *United States*, 321 U.S. 67 (1944). Speaking for the Court, Mr. Justice Rutledge observed:

> "To secure the continuous, close and informed supervision which enforcement of legislative mandates frequently requires, Congress has vested expert administrative bodies such as the Interstate Commerce Commission with broad discretion and has charged them with the duty to execute stated and specific statutory policies. That delegation does not necessarily include either the duty or the authority to execute numerous other laws. Thus, here, the Commission has no power to enforce the Sherman Act as such. It cannot decide definitively whether the transaction contemplated constitutes a restraint of trade or an attempt to monopolize which is forbidden by that Act. The Commission's task is to enforce the Interstate Commerce Act and other legislation which deals specifically with transportation facilities and problems. That legislation constitutes the immediate frame of reference within which the Commission operates; and the policies expressed in it must be the basic determinants of its action." (321 U.S., at 79-80)

> "Whatever may be the case with respect either to other kinds of transactions by or among carriers or to consolidations of different types of carriers, there can be little doubt that the Commission is not to measure proposals for all-rail or all-motor consolidations by the standards of the anti-trust laws. Congress authorized such consolidations because it recognized that in some circumstances they were appropriate for effectuation of the national transportation policy. It was informed that this policy would be furthered by 'encouraging the organization of stronger units' in the motor carrier industry. And in authorizing those consolidations it did not import the general policies of the anti-trust laws as a measure of their permissibility." (*Id.*, at 84-85)

"In short, the Commission must estimate the scope and appraise the effects of the curtailment of competition which will result from the proposed consolidation and consider them along with the advantages of improved service, safer operation, lower costs, etc., to determine whether the consolidation will assist in effectuating the over-all transportation policy. Resolving these considerations is a complex task which requires extensive facilities, expert judgment and considerable knowledge of the transportation industry. Congress left that task to the Commission 'to the end that the wisdom and experience of that Commission may be used not only in connection with this form of transportation, but in its coordination of all other forms.' 79 Cong. Rec. 12,207. 'The wisdom and experience of that commission', not of the courts, must determine whether the proposed consolidation is 'consistent with the public interest'." [citing cases] (*Id.*, at 88)

And only recently the Court once again considered and rejected similar contentions, urged this time on the basis of Section 7 of the Clayton Act,[13] in an attempt to set aside a

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[13]The acquisition was proposed, and Commission approval sought, in 1955. Consequently, §7 as amended by the Celler-Kefauver Act of 1950 was the relevant version of the Act. Incredibly, the court below held that in *Minneapolis* this Court had only considered the pre-1950 version of Section 7. See Appendix A, vol. I, p. 11, n. 32. Why the Court would have restricted its consideration to the pre-1950 version of the statute when all the relevant events occurred at last five years after the passage of the 1950 Amendment is mysterious. The reference given by the District Court for its extraordinary conclusion is footnote 11 of the opinion in *Minneapolis*. That footnote is simply a citation for §7 and reads in its entirety: "15 U.S.C. §18; 38 Stat. 731." Presumably from Mr. Justice Whittaker's citation practice of citing simply the original Statute-at-Large reference for an amended statute, the court below assumed that this Court was disregarding the relevant subsequent amendments.

Footnote 10 of the opinion in *Minneapolis* cites Section 1 of the Sherman Act as: "15 U.S.C. §1, 26 Stat. 209." Section 1 of the Sherman Act has, of course, been amended since its passage at 26 Stat. 209 in 1890 on two occasions, once in 1937 and again in 1955. Perhaps the District Court, if confronted with the problem, would assume from this reference that the Supreme Court in 1959 was not yet prepared to take into account the 1937 amendment to Section 1 of the Sherman Act.

railroad acquisition approved by the Commission pursuant to Section 5(2) of the Act. *Minneapolis & St. L. R. Co.* v. *United States,* 361 U.S. 173 (1959). There the Court reiterated and entirely reaffirmed the standards governing Commission action set forth in *McLean.* It reiterated that the Commission's power under Section 5 is—as that section provides—"exclusive and plenary"; that while "the preservation of competition among carriers [is] . . . still a value," it is "significant chiefly as it aids in the attainment of the objectives of the national transportation policy"; and that the Commission "is not to measure proposals for [acquisitions] by the standards of the antitrust laws." (361 U.S., at 185.)

The court below, nonetheless, held that this Court's decisions in *McLean* and *Minneapolis* were no longer appropriate standards for Commission evaluation of the competitive impact of a merger. Accordingly, it set aside the Commission's order solely because the Commission did not literally follow the specific techniques and make the specific findings required in a case governed by Section 7 of the Clayton Act as elaborated in the *Brown Shoe* case—despite the conceded substantive inapplicability of Section 7 to this case.

The court below gave two reasons for disregarding the teaching of *McLean* and *Minneapolis:*

(a) First, the court below isolated the Court's language in *McLean* that "the Commission has no power to enforce the Sherman Act as such." (321 U.S., at 79) Against this, it cited the provision of Section 11 of the Clayton Act: "Authority to enforce compliance with Sections 2, 3, 7, and 8 of this Act by the persons respectively subject thereto is hereby vested in the Interstate Commerce Commission where applicable to common carriers subject to the Interstate Commerce Act. . . ."—On this basis, it held that a different result was required where a question under Section 7 was raised as to a railroad merger.

But the lower court's rationale simply begs the question. Section 11 is one of the procedural provisions of the Clayton Act, providing for dual public enforcement of the provisions of the Act both through administrative proceedings before specified agencies (Section 11) and by suits prosecuted by the Justice Department (Section 15).[14] Passed the month after the Federal Trade Commission Act, it vested authority to hold administrative proceedings to enforce the Clayton Act in the FTC in the case of corporations generally, and in the Interstate Commerce Commission, the Federal Reserve Board, and—as later amended, the Federal Communications Commission and the Civil Aeronautics Board—as to corporations within their general jurisdiction. However, it only vests authority in the Commission to enforce the Clayton Act "*where applicable* to common carriers"; and it offers no guide as to the substantive applicability of the Clayton Act to transactions involving railroads."[15]

At present, the only substantive provision of the Clayton Act as to the applicability of Section 7 to mergers between railroads is the provision of the final paragraph of Section 7 to the effect that: "Nothing contained in this Section shall apply to transactions duly consummated pursuant to authority given by the . . . Interstate Commerce Commission . . . under any statutory provision vesting such power in such Commission . . ." Thus, the fact is, to the extent that mergers involving railroads are the subject of approval by the Interstate Commerce Commission—as mergers between railroads currently are under Section 5(2) of the Interstate Commerce Act—Section 7 of the Clayton Act is not in terms applicable to them; and the Commission has no substantive provision of the Clayton Act to enforce.

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[14] 38 Stat. 736 (1914), as amended, 15 U.S.C. §25.

[15] When Section 11 was passed, railroad mergers and acquisitions were fully subject to the antitrust laws. That situation was, as developed above, drastically changed by the Acts of 1920 and 1940.

Section 11's function is this: At the present time, and from time to time during the history of Section 11, there have been mergers and acquisitions involving rail carriers as to which the Commission would have no "approval" power or as to which the Commission's "approval" power was not invoked. As to these, the Commission has the administrative jurisdiction—corresponding to the familiar jurisdiction of the FTC as to corporations generally—to enforce Section 7[16]. The FTC's power, like the ICC's powers as to those mergers and acquisitions as to which it does not have approval powers, is an administrative power of enforcement of a prohibitory statute, not a regulatory power in the strict sense. For example, at the present time, vertical or conglomerate acquisitions by rail carriers as to which the Commission has no approval power under Section 5, would be subject to its power specifically to enforce Section 7 as such.[17] But the point is that the Commission's procedural authority to apply Section 7 in the limited cases in which it is substantively applicable to railroads does not change the teaching of the *McLean* case—specifically reiterated as to Section 7 in the *Minneapolis* case—that the Commission's functions in the case of a merger between carriers under Sec-

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[16]See, *e.g.*, *Transamerica Corp* v. *Board of Governors*, 206 F.2d 163 (3d Cir. 1953), *cert. denied*, 346 U.S. 901 (1953), involving the Federal Reserve's administrative enforcement of Section 7.

[17]During the six years between the passage of the Clayton Act and the Transportation Act of 1920, all acquisitions by rail carriers meeting the language of Section 7 would have been in that category; and in the years after the passage of the Act of 1920, acquisitions which had not been brought to the Commission for approval were repeatedly held subject to its challenge under Section 7. See *ICC* v. *Pennsylvania R. Co.*, 169 I.C.C. 618, 642 (1930), *reversed on other grounds*, 66 F.2d 37 (3d cir. 1933); *ICC* v. *Baltimore & O. R. Co.*, 160 I.C.C. 785 (1930); *ICC* v. *Baltimore & O. R. Co.*, 152 I.C.C. 721 (1929). The necessity for the Commission to use its powers under Section 7 in this precise context was removed in 1933 when the provision which is now Section 5(7) of the Interstate Commerce Act was added. 48 Stat. 217. This provision prohibits effecting without Commission approval transactions of the nature which the Commission is authorized to approve under Section 5.

tion 5(2) of the Interstate Commerce Act do not consist of specifically applying the substantive provisions of the antitrust laws.

(b) Second, the lower court—presumably embarrassed by the fact that the *Minneapolis* case itself involved Clayton Act Section 7—held that the *Brown Shoe* decision in 1961 somehow changed the rules applicable to mergers between rail carriers. The point is so clearly wrong as not to require extended discussion. The *Brown Shoe* decision did not invent amended Section 7 of the Clayton Act. That Act had been on the books in its present form since the passage of the Celler-Kefauver Act of 1950, nine years before the *Minneapolis* case.[18] In the first place, it is mysterious how the development of doctrine under Section 7 of the Clayton Act has decisional impact upon a case in which Section 7 is concededly not governing. And, in any event, the concept that, in an action against a merger under the prohibitory provisions of Section 7, an essential task is the determination of the relevant market or submarkets was not one originated by *Brown Shoe*, and it turns the history of the development of antitrust doctrine on its head to say so. *Brown Shoe* was rather a specific application of standards quite expressly stated in the Clayton Act,[19] and articulated by this Court in a long line of decisions culminating in *United States* v. *DuPont de Nemours & Co.*, 353 U.S. 586 (1957) (*"General Motors"*), which was decided two years before *Minneapolis*: "Determination of the relevant market is a necessary predicate to a finding of a violation of the Clayton Act: . . ." (*Id.*, at 593) The tests which the District Court thought *Brown Shoe* discovered have been implicit and explicit in antitrust cases for years: See *United States* v. *Bethlehem Steel Corp.*,

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[18] See note 13, *supra*.

[19] Amended Section 7 of the Act prohibits mergers "where in any line of commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly."

168 F. Supp. 576, 583 (S.D.N.Y. 1958) (Clayton Act §7); *Standard Oil Co.* v. *United States*, 337 U.S. 293 (1949) (Clayton Act §3); *Van Camp & Sons* v. *American Can Co.*, 278 U.S. 245 (1929) (Clayton Act §2); *Standard Oil Co.* v. *United States*, 221 U.S. 1, 61 (1911);[20] *Indiana Farmer's Guide Publishing Co.* v. *Prairie Farmer Publishing Co.*, 293 U.S. 268, 279 (1934); *United States* v. *Yellow Cab Co.*, 332 U.S. 218 (1947); *United States* v. *Paramount Pictures, Inc.*, 334 U.S. 131, 172-73 (1948); *United States v. Columbia Steel Co.*, 334 U.S. 495 (1948); *Times Picayune Pub. Co.* v. *United States*, 345 U.S. 594 (1953); *International Boxing Club* v. *United States*, 358 U.S. 242, 251 (1959) (Sherman Act).

The District Court's rejection of the teaching of this Court's decisions in the *McLean* and *Minneapolis* cases was accordingly effected on patently erroneous grounds and furnishes a clear basis for this Court's assumption of jurisdiction on appeal.

2. Moreover, the need for this Court to assume jurisdiction over this appeal is underscored by the fact that the Commission's report, set aside by the lower court for failure to make the sort of findings which would have been appropriate in a case under Section 7 of the Clayton Act, was executed in scrupulous conformity to the command of Section 5(2) of the Interstate Commerce Act and of the decisions of this Court under it in *McLean* and *Mineapolis*. – The court below did not examine the adequacy of the Commission's findings in the light of the standards of this Court's decisions in those cases. But had it done so it could not have escaped the conclusion that the Commission not only made specific, detailed and incon-

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[20] "The commerce referred to by the words 'any part' construed in the light of the manifest purpose of the statute has both a geographical and a distributive significance; that is it includes any portion of the United States and any one of the classes of things forming a part of interstate or foreign commerce." (221 U.S., at 61)

testable findings as to the special standards of Section 5(2)(c), but that it "estimated" and "appraised" the competitive effects of the merger, and "gave weight to antitrust policy," in great detail, and through the use of powers which were specifically relevant to the Commission's regulatory regime.

Unlike similar regulatory statutes[21]—and indeed unlike certain other aspects of the Interstate Commerce Act[22]—the factor of preservation of competition is not expressly listed by Congress among the factors which the Commission must evaluate in considering approval of a merger under Section 5(2). Indeed the statute—and the history of legislation in this field—indicate clearly that Congress contemplated and expected that the rail consolidations which it sought to foster by the Transportation Acts of 1920 and 1940, would eliminate competition in some degree. In fact, appropriate elimination of duplicating facilities caused by the overbuilding of the American railroad system was one of the goals sought by Congress.

Nonetheless, the decisions of this Court in *McLean* and *Minneapolis* teach that the competitive policy underlying the antitrust laws—though not the specific technical terms of those laws—must be taken into account by the Commission, and ac-

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[21]The somewhat similar provision of Section 408 of the Federal Aviation Act, 49 U.S.C. §1378, which governs mergers or consolidations involving air carriers, and as to which there is an exemptive provision from the antitrust laws as to transactions approved by the CAB, somewhat similar to that provided in Section 5(11) of the Interstate Commerce Act (Section 414 of the Federal Aviation Act, 49 U.S.C. §1384), contains an express provision: "that the Board shall not approve any [transaction] . . . which would result in creating a monopoly or monopolies and thereby restrain competition . . ."

[22]Section 5(2)(b) of the Interstate Commerce Act provides that acquisitions of motor carriers by rail carriers may not be approved by the Commission under Section 5(2) unless the Commission finds that the transaction "will not unduly restrain competition." No similar expression is contained in the Act as to mergers between rail carriers. The Transportation Act of 1940, in fact, deleted a provision along these lines which had been inserted by the 1920 Act.

commodated with other factors, in passing on a merger under Section 5(2). The Commission laboriously did so here. The issue, then, is *not* whether the Commission must evaluate the competitive effects of the merger as part of determining whether it is "consistent with the public interest"—the applicable statutory standard of Section 5(2)(b). Of course it must; and there is no claim that in the present case the Commission failed to comply with the standards prescribed in *McLean* and in *Minneapolis;* that it "estimate" and "appraise" and "give weight to" the effects of the merger on competition and to "antitrust policy." The Commission thoroughly complied. It made an examination—so extensive as to dwarf that made in the *Minneapolis* case[23]—of the competitive effects of the merger; of the rail competition which would be presented after the merger; of the special situation presented as to rail transportation in central and western Florida; as to the competitive aspects of other modes of transportation. It prescribed important and unprecedented conditions on its approval of the merger in order to protect and to foster balanced intramodal competition in certain respects that it deemed advisable in view of the impact of the merger. The Commission's reference to its "extensive study of the competitive situation in the southeast" was far from an immodest one.

The Commission found that the merger would result in the elimination of duplicating services and facilities, would reduce costs, would maximize the use of railroad properties and increase the overall efficiency of operations, and would promote safe, adequate, economical and efficient service. It found that, with the conditions attached, two balanced competitive rail systems in the Southeast would be established and that this would further the National Transportation Policy. As to the specific question of the competitive effects of the merger, the

[23]In the *Minneapolis* case, the Commission's discussion of the competitive factors covered only five printed pages.

Commission found as to intermodal transportation that the merged company would be able more effectively to meet the rapidly growing and intense competition of other modes of transportation in the area. And, as to intramodal competition, the Commission found that the advantages of the merger would far outweigh such curtailment of competition as might result.[24]

The Commission accordingly fully and completely discharged the duty imposed upon it by Congress in this area. The requirement of the District Court that the Commission make the technical findings which would have been appropriate had Section 7 of the Clayton Act been applicable to the case is thus a purely gratuitous one, which finds no justification in the governing statutes or in this Court's decisions.

3. Finally, the adverse effects on the administration of the merger provisions of the Interstate Commerce Act that necessarily attend the requirement imposed by the District Court—and its utter incompatability with the realities of transportation regulation and the Commission's regulatory regime under Section 5(2)—furnish a final ground for the Court's assumption of jurisdiction here.

The technique of defining a precise product market and a precise geographic market is, of course, relevant and indispensable in a case under the provisions of Section 7 of the Clayton Act. Section 7 is a prohibitory statute. Where "in any line of

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[24] Thus, the Commission concluded that:

"For these reasons and weighing all the factors previously discussed, plus the further consideration that railroads today encounter increasingly strong competition from other modes of transportation, we conclude and specifically find that (1) the reduction of rail competition caused by the proposed merger will not be substantial; (2) ample competitive rail service will remain after the merger throughout most of the affected area, and (3) such reduction in competition as will result from the merger will have no appreciably injurious effect upon shippers and communities." (320 I.C.C. at 167).

commerce in any section of the country" the acquisition which is challenged might have the effect of "substantially . . . lessen-[ing] competition," it is prohibited. *Brown Shoe,* 370 U.S., at 337. It does not matter that because of countervailing factors the overall effect of the acquisition or merger may be salutary,[25] or that there may be other markets in which there is no effect on competition or in which the effect of the merger may be to stimulate competition. Once a market is defined in which the merger has the probable effects specified in the statute, inquiry is at an end.

But under the regulatory, rather than prohibitory, approach of Section 5(2) of the Interstate Commerce Act, it is not conclusive that the merger has the effect of substantially lessening competition in a relevant product and geographical market, or in ten or twenty such markets, or even, if it could be imagined, in every market affected by the merger. For it is indisputable and undisputed in this case that the Commission might still lawfully approve the merger even if it were to follow the procedural approach envisioned by the District Court and find that there was a probability of the lessening of competition in one or a number of defined markets. Indeed, it was clearly envisioned by Congress, in the National Transportation Policy, that considering rail competition alone, the elimination of considerable competition by way of merger was desirable.

The approach followed by the Commission is, then, obviously the only meaningful one that could be followed in terms of Section 5(2) of the Interstate Commerce Act. The Commission is to form an overall judgment as to the relationship of the merger to the public interest. One of the factors implicit in the public interest is the repeatedly declared policy of Congress of "encouraging the organization of stronger units' in the

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[25] See *United States* v. *Philadelphia National Bank,* 374 U.S. 321, 371 (1963).

. . . industry." *McLean*, 321 U.S., at 84; *Minneapolis*, 361 U.S., at 187. This factor, when taken with the Commission's avowed purpose of giving the necessary weight to the preservation of balanced rail competition, fully warrants the approach of the Commission in analyzing the merger in terms of the overall competitive position in the region—though not without particular attention to specific problem areas like Florida—rather than following the rubrics of a trial under Section 7 of the Clayton Act. Once again, this Court's repeated statement that the Commission is to "estimate," "appraise," and "give weight to" the effect of the merger on competition is not a mandate to convert a proceeding under Section 5(2) into a series of antitrust trials.

Finally, the administrative burdens imposed by the procedural two-step ordered by the court below are potentially staggering. Merger proceedings before the Commission are already most protracted in nature, as the history of this case suggests. It might well be that the lifetime of man would not be sufficient to accommodate the proof as to the competitive effect of a rail merger in each "line of commerce" in each "section of the country," as the application of the specifics of Section 7 of the Clayton Act would demand. And the irony is that after all this proof was put in it concededly would not be controlling. Indeed, the details as to the consequences in each individual market might well be entitled to only minimal consideration in view of the main thrust of the Commission's responsibility to make an overall judgment about the merger, and the inescapable facts of the railroad situation.

In a relatively simple situation like that in *Brown Shoe*, involving a single generic product, proof of the relevant market—the lines of commerce and the sections of the country—affected by the acquisition is manageable although frequently perplexing and almost invariably time-consuming. But in the case of

a merger of competing railroads, the task is staggering to contemplate.

If the Section 7 tests were to be applied in terms to a rail carrier merger, there would first have to be a definition of each of the "relevant markets" in terms of the "lines of commerce" and the geographic areas constituting each market; and then there would have to be market-by-market evidence and findings as to the competitive effect of the merger. – It is hard to imagine anything more local than the provision of transportation services; if they are not locally available they are irrelevant. A shipper at Brunswick, Georgia, is hardly helped by the fact that there is a railroad serving Atlanta. Only those railroads—or other carriers—competing for traffic in the Brunswick area make any impact upon him. Thus, in the rubric of Section 7 there might well be scores of relevant geographic markets involved in any rail merger of any real size. The matter is further complicated when the question of destination points is considered. It might well be argued that every set of origination and destination "city pairs" between which there is a substantial amount of commerce is a geographic market in terms of the specifics of Section 7.[26]—And whatever disposition was finally reached as to the question of definition of the markets involved, presumably evidence on all theories would be offered and received, with resultant proliferation of the proceedings.

Presumably "transportation service" is the line of commerce involved. But since transportation service could not be con-

[26]Seaboard and Coast Line offer directly competing service at 121 cities and participate in service to thousands of points beyond their lines. Simply taking the cities which are directly served by the carriers, it is mathematically possible to construct 7,260 different city pairs in terms of origination and destination from these 121 cities. The next step, on this approach, would be to determine which of these "city pairs" constitute significant markets; and to determine which of a staggering number of possible "city pairs" between the 121 on-line and an enormous number of off-line origination and destination points are significant markets in terms of the railroads involved in the merger.

sidered in a vacuum it might well be that each type of commodity or product which is carried would have to be identified in relation to each specific geographic point. Furthermore, if it is held that the relevant market includes intermodal transportation—road, water, air and pipeline[27] alternatives—the various alternatives would have to be identified for each commodity group at each origination area and from each such origination area to each destination point. As indicated, in a case under Section 7 of the Clayton Act, once it was established that the proscribed effects on competition were present in *any* market, inquiry would be at an end. But all these alternatives would have to be canvassed in a rail merger case, under the two-step procedure mandated by the court below, since the finding of a proscribed effect in any such market would not be the end of the inquiry, but scarcely the beginning.

Clearly a decision which imports procedural techniques of such profound irrelevance and with such potentialities for endless administrative delay[26] warrants this Court's review on appeal, even apart from the flat and admitted repugnance of the decision below with this Court's earlier decisions relating to Section 5(2) of the Act.[29]

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[27]Or, in the case of utility coal, the long distance transmission of electrical energy—"coal by wire."

[28]This case has already spent 44 months in the hands of the I.C.C.

[29]Should probable jurisdiction be noted, we will present to the Court two other points raised before the District Court by plaintiffs, which the District Court declined to pass on in view of its reversal of the Commission's order. These points are (1) whether the Commission properly exercised its discretion in determining that the acquisition by Mercantile of the indirect power to control the merged company would be consistent with the public interest without requiring Mercantile to be considered a carrier under Section 5(3) of the Interstate Commerce Act; and (2) whether the conditions imposed by the Commission to protect the interests of the railroad employees were adequate, were in accord with the provisions of the Interstate Commerce Act, and were supported by proper findings. We shall argue to the Court that these points are ripe for adjudication, and that in the light of the manifest correctness of the Commission's rulings as to them, this Court should pass on them itself and order the complaint in the District Court dismissed and the Commission's orders reinstated.

CONCLUSION

For the reasons stated, probable jurisdiction should be noted.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 425

SEABOARD AIR LINE RAILROAD COMPANY, ATLANTIC COAST LINE RAILROAD COMPANY, et al.,
Appellants

v.

UNITED STATES OF AMERICA, FLORIDA EAST COAST RAILWAY COMPANY, et al.,
Appellees

On Appeal from the United States District Court for the Middle District of Florida

APPENDICES TO JURISDICTIONAL STATEMENT

VOLUME I

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INDEX

JURISDICTIONAL STATEMENT

	Page
OPINIONS BELOW	2
JURISDICTION	2
STATUTES INVOLVED	3
QUESTION PRESENTED	4
STATEMENT OF THE CASE	5
Proceedings before the Commission	5
Proceedings in the District Court	11
THE QUESTION IS SUBSTANTIAL	13
CONCLUSION	30

APPENDICES TO JURISDICTIONAL STATEMENT
VOLUME I

APPENDIX A—Opinion and Final Judgment of the District Court	1
APPENDIX B—Order dated December 2, 1963, of Interstate Commerce Commission Approving the Merger	21
APPENDIX C—Order dated March 4, 1964, of Interstate Commerce Commission Approving the Merger and Denying Petitions for Reconsideration	25
APPENDIX D—Statutes Involved	29

APPENDICES TO JURISDICTIONAL STATEMENT
VOLUME II

APPENDIX E—Report and Recommended Order of Interstate Commerce Commission Examiner	1

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APPENDIX A

IN THE

United States District Court

FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

FLORIDA EAST COAST RAILWAY COMPANY, a corporation, Florida East Coast Building, St. Augustine, Florida,

Plaintiff,

versus

No. 64-64-Civ.J.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION,

Defendants.

Before RIVES, Circuit Judge, and SIMPSON and McRAE, District Judges.

OPINION

RIVES, Circuit Judge:

This is an action to enjoin, annul, and set aside orders of the Interstate Commerce Commission[1] which, subject to routing and gateway conditions and employee protective conditions, authorize the merger of the Atlantic Coast Line Railroad Company into Seaboard Air Line Railroad Company and the related acquisition of control by Seaboard of carriers subsidiary to or affiliated with Atlantic Coast Line, most prominently including Louisville and Nashville Railroad Company. Florida

[1] See 49 U.S.C § 17(9); 28 U.S.C. § 2321.

East Coast Railway Company brought the action against the United States and the Interstate Commerce Commission.[2]

[2]

Since the Attorney General, representing the United States,[3] opposes the merger, the United States has been realigned as a party plaintiff. Jurisdiction of this court is provided by 28 U.S.C. § 1336, and a district court of three judges has been convened as required by 28 U.S.C. § 2325.

Plaintiff Florida East Coast Railway Company, a Florida corporation, has its principal office at Saint Augustine, Saint Johns County, Florida, which is in the Middle District of Florida. Hence venue is properly laid in the Middle District. See 28 U.S.C. § 1398.

The Railway Labor Executives' Association, the Southern Railway Company, and its affiliated companies in the Southern Railway System intervened as parties plaintiff. The Mercantile-Safe Deposit and Trust Company, the Seaboard Air Line Railroad Company, the Atlantic Coast Line Railroad Company and The Atlantic Coast Line Company intervened as parties defendant in support of the challenged orders of the Commission.

Florida East Coast's motion for an order restraining temporarily the operation and effective date of the orders of the Interstate Commerce Commission, pending the final hearing and determination of the action, see 28 U.S.C. § 2324, was granted by the Honorable Bryan Simpson, Chief Judge, United States District Court for the Middle District of Florida, based on the specific finding that irreparable damage would

[3]

[2] See 28 U.S.C. §§ 2322, 2323; 49 U.S.C. § 17(9).
[3] See 28 U.S.C. § 2323.

result to the plaintiffs if the temporary restraining order was not granted. See 28 U.S.C. §§ 2284(3), 2324. Compare 28 U.S.C. § 2325.

The Commission stated that the merger it approves[4] would result in the elimination of present competition between Seaboard and Atlantic Coast Line in a six-state area.[5] In the six-state area and in an eight-state area,[6] the merged company would control more than 54 per cent of the total railroad mileage, while the Southern Railway Company, its nearest competitor, would have about 34 per cent. The merged company would have approximately 81 per cent of the railway mileage in Florida. See Seaboard Air Line R.R., 320 I.C.C. 122, 163 (1963). Approximately 4,257 jobs would be abolished and the location of employment would be changed for 4,439 other employees, 320 I.C.C. at 154. The Commission found that: the reduction of rail competition caused by the proposed merger will not be substantial; ample competitive rail service will remain after the merger throughout most of the affected area; and the reduction in competition that will result from the merger will have no appreciable injurious effect upon shippers and communities.

[4]

320 I.C.C. at 167. The Commission noted that the merger will have substantial adverse effects upon many railroad employees and their families, but, in the long run, the merger would provide greater job security and more stabilized conditions of employment for employees of the merged company. See 320 I.C.C. at 200. Both Seaboard Air Line and Atlantic Coast Line are currently in healthy financial condition.

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[4] Commissioner Webb, with whom Commissioner Tucker joined, dissented.

[5] The six states are Alabama, Florida, Georgia, North Carolina, South Carolina and Virginia.

[6] The additional states are Tennessee and Kentucky.

The questions raised in this three-judge district court action deal with the protective conditions for employees and with the relationship between section 5(2)[7] of the Interstate Commerce Act—which authorizes the Commission to approve proposed mergers that are found to be in the "public interest"[8] —and the antitrust laws, more specifically section 7 of the Clayton Act.[9]

Plaintiff Florida East Coast suggests that the ultimate importance of this case is that the Commission has written preservation of competition and prevention of monopoly out of the concept of "public interest."

[5]

Section 5(2)(c) of the Interstate Commerce Act, which sets forth certain factors which must be considered by the Commission in passing upon any proposed railroad merger or affiliation, does not expressly require that the Commission consider the antitrust laws as a factor in the public interest. The Commission is required by section 5(2)(c) to

> "give weight to the following considerations, *among others:* (1) The effect of the proposed transaction upon adequate transportation service to the public; (2) the effect upon the public interest of the inclusion, or failure to include, other railroads in the territory involved in the proposed transaction; (3) the total fixed charges resulting from the proposed transaction; and (4) the interest of the carrier employees affected."[10]

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[7] 49 U.S.C. § 5(2).

[8] 49 U.S.C. § 5(2)(b); see *e.g.*, Phillips, Railroad Mergers: Competition, Monopoly, and Antitrust, 19 Wash. & Lee L. Rev. 1, 9 (1962).

[9] 15 U.S.C. § 18.

[10] 49 U.S.C. § 5(2)(c). (Emphasis added.) The Act of Sept. 18, 1940, ch. 722, tit. I § 1, 54 Stat. 899, which amended the Interstate Commerce Act, set forth the "National Transportation Policy":

> "It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all

[6]

However, the Commission has long been required "to give weight to the antitrust policy of the nation before approving mergers and consolidations."[11] The antitrust laws are expressly considered in section 5(11) of the Act which exempts carriers and individuals participating in an approved merger

> "from the operation of the antitrust laws and of all other restraints, limitations, and prohibitions of law, Federal, State or municipal, insofar as may be necessary to enable them to carry into effect the transactions so approved . . . and to hold, maintain, and operate any properties and exercise any control or franchises acquired through such transaction."[12]

The Commission has been required to accommodate section 5(2) and the antitrust legislation due to the presence of the

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> modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions;—all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. *All of the provisions of this Act shall be administered and enforced with with a view to carrying out the above declaration of policy.*"

49 U.S.C.A. (Historical note following table of contents). (Emphasis supplied.)

11 Georgia v. Pennsylvania R.R., 1945, 324 U.S. 439,456.

12 McLean Trucking Co. v. United States, 1944, 321 U.S. 67, 76-77; 49 U.S.C. § 5(11). In cases of affiliation of a motor carrier with a railroad, the Commission cannot approve the merger "unless it finds that the transaction proposed will be consistent with the public interest and will enable such carrier to use service by motor vehicle to public advantage in its operations and will not unduly restrain competition." 49 U.S.C. § 5(2)(b).

section 5(11) exemption[13] and the history of the development of

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the national transportation policy.[14]

In giving weight to antitrust policy as a factor in the "public interest," plaintiff Florida East Coast contends that the Commission must define the "line of commerce" (relevant product, or services, market) and "section of the country" (relevant geographical market) in which to appraise the probable competitive effects of the proposed merger and must determine whether the effect of the merger "may be substantially to lessen competition" or "tend to create a monopoly."[15]

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On its face this contention may seem contrary to the Supreme Court's decision in *McLean Trucking Co. v. United*

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[13] Minneapolis & St. L. R.R. v. United States, 1959, 361 U.S. 173, 186.

[14] McLean Trucking Co. v. United States, 1944, 321 U.S. 67, 79.

[15] Section 7 of the Clayton Act provides in part:

> "No corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no corporation subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of another corporation engaged also in commerce, where in any line of commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly.
>
> "No corporation shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no corporation subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of one or more corporations engaged in commerce, where in any line of commerce in any section of the country, the effect of such acquisition, of such stocks or assets, or of the use of such stock by the voting or granting of proxies or otherwise, may be substantially to lessen competition, or to tend to create a monopoly.
>
> . . . . . .
>
> "Nothing contained in this section shall apply to transactions duly consummated pursuant to authority given by the . . . Interstate Commerce Commission. . . ."

15 U.S.C. § 18.

States.[16] *McLean* involved the Commission's approval of the consolidation of seven large motor carriers. The most important effect of the merger was to create an end-to-end consolidation from points in the far South to New England, with obviously large possibilities for through service.[17] The order approving the consolidation was attacked on the ground that the merger, notwithstanding Commission approval, violated the Sherman Act[18] and, hence, the Commission had no power to approve the merger. The Court decided that the Commission is not required to decide definitively whether the transaction violates the Sherman Act, but that the Commission's role is to "estimate the scope and appraise the effects of the curtailment of competition which will result from the proposed consolidation and consider them along with the advantages of improved service, safer operation, lower costs, etc., to determine whether the consolidation

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will assist in effectuating the over-all transportation policy."[19] However, *McLean* does not dispose of the plaintiff's contention. Basic to the Court's determination in that case was the holding that the Commission has no jurisdiction to enforce the proscriptions of the Sherman Act. The Court stated:

> "To secure the continuous, close and informed supervision which enforcement of legislative mandates frequently requires, Congress has vested expert administrative bodies such as the Interstate Commerce Commission with broad discretion and has charged them with the duty to execute stated and specific statutory policies. That delegation does not necessarily include either the duty or the authority to execute numerous other laws. Thus here, *the Commission has no power to enforce the Sherman Act as such. It cannot decide definitively whether the transaction contem-*

[16] 321 U.S. 67 (1944).
[17] See *id.* at 71.
[18] See 15 U.S.C. §§ 1-3.
[19] *Id.* at 87.

> *plated constitutes a restraint of trade or an attempt to monopolize which is forbidden by that Act.* The Commission's task is to enforce the Interstate Commerce Act and other legislation which deals specifically with transportation facilities and problems. That legislation constitutes the immediate frame of reference within which the Commission operates; and the policies expressed in it must be the basic determinants of its action."

321 U.S. at 79-80 (Emphasis supplied.) In sharp contrast to the Commission's lack of jurisdiction to enforce the Sherman Act, Congress by section 11 of the Clayton Act has entrusted the Commission with authority to enforce compliance with section 7 and other Clayton Act provisions "where applicable to common carriers" under the Commission's jurisdiction.[20]

[10]

While "the Commission's task is to enforce the Interstate Commerce Act and other legislation which deals specifically with transportation facilities and problems," the Clayton Act legislation constitutes an additional "frame of reference within which the Commission operates."[21]

We think *Minneapolis & St. L. Ry.* v. *United States*,[22] a decision more recent than *McLean*, recognizes that the Commission's estimate of the scope and appraisal of the effects of any curtailment of competition which might result from a merger is to be initially and properly approached in terms of whether the effect is "substantially to lessen competition, or to tend to create a monopoly." In *Minneapolis* the Commission found that a proposed railroad acquisition "would not result in any significant [much less substantial] lessening of com-

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[20] 15 U.S.C. § 21. See Georgia v. Pennsylvania R.R., 1945, 324 U.S. 439, 456 and n. 9.

[21] See McLean Trucking Co. v. United States, 1944, 321 U.S. 67, 79-80.

[22] 361 U.S. 173 (1959).

petition.[23] Its determination was said to rest upon "adequate findings."[24]

[11]

There is an additional reason why the Commission is required to decide whether or not section 7 of the Clayton Act would be violated by the proposed merger. It would seem that the Commission is required to "give weight" to antitrust policy in a section 5(2) proceeding only if the merger has the probable anticompetitive effect proscribed by section 7 of the Clayton Act. More specifically, when the effect of a proposed merger "may be substantially to lessen competition" or "to tend to create a monopoly," "in any line of commerce in any section of the country," the prohibition of the Clayton Act must be given weight. Conversely, when the proposed merger would not so result, the Commission is not required to give weight to antitrust policy. The Commission impliedly recognizes such a principle in its finding in the present case that the reduction of rail competition caused by the proposed merger will not be substantial. 320 I.C.C. 167.

Furthermore, it has long been settled that "immunity from the antitrust laws is not lightly implied."[25] When an agency, such as the Interstate Commerce Commission, is entrusted by Congress with authority to require compliance with section 7 of the Clayton Act,[26] and also to grant relief

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from the operation of the antitrust laws,[27] the logical corollary would be that the Commission will not grant immunity from the anti-

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[23] *Id.* at 188, 189.
[24] *Id.* at 189.
[25] See, *e.g.*, United States v. Philadelphia Nat'l Bank, 1963, 374 U.S. 321, 348.
[26] 15 U.S.C. § 21.
[27] 49 U.S.C. § 5(11).

trust laws unless clearly authorized by the law and required by the evidence.

For that policy to have any real substance the Commission is required to determine whether or not the effect of the proposed merger "may be substantially to lessen competition" or "to tend to create a monopoly," "in any line of commerce in any section of the country." That does not mean that the Commission may authorize only those acquisitions which would not offend section 7 of the Clayton Act.[28] The Commission with propriety may approve a rail consolidation, otherwise prohibited by the antitrust laws, in order to bring about needed or desirable improvement in service and economies in operation.[29] In other words, if the Commission finds that the policy of the Transportation Act would be thwarted unless a particular type of merger or consolidation were permitted, it would be authorized to approve the merger or consolidation,

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although the transaction would otherwise violate section 7 of the Clayton Act.[30]

Concomitant to the Commission's determination of whether the effect of the merger "may be substantially to lessen competition" or "tend to create a monopoly," the Commission must define the area of effective competition by reference to a product, or service market (the "line of commerce") and a geographic market (the "section of the country").[31]

We note that in *Minneapolis & St. L. Ry., supra,* which considered both the Sherman Act and section 7 of the Clayton Act, the Supreme Court did not expressly direct the Commis-

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[28] See Minneapolis & St. L. Ry. v. United States, 1959, 361 U.S. 173, 187.

[29] See McLean Trucking Co. v. United States, 1944, 321 U.S. 67, 78.

[30] See *id.* at 94 (dissenting opinion).

[31] See Brown Shoe Co. v. United States, 1962, 370 U.S. 294, 324.

sion to define the relevant market by delineating a service market and a geographical market. However, that case was decided prior to *Brown Shoe Co.* v. *United States*, 1962, 370 U.S. 294. *Brown Shoe* was the first case to consider the background of the 1950 amendments to section 7 of the Clayton Act. In *Brown Shoe*, the Supreme Court set forth directions for measuring the relevant market within which the anticompetitive effects of a merger are to be judged.[32]

[14]

There is an additional reason for requiring the Commission to determine the product market and the geographic locus of competition. The Commission imposed routing and gateway conditions for the benefit of the intervening railroads to offset possible diversion of traffic by the merged company. It noted that "absent suitable protective conditions and consideration of these factors [the public advantage that will accrue from the merger], there is a distinct possibility that the proposed transaction would tend to lessen competition to an extent which would contravene the policy underlying the antitrust laws."[33] We think it clear, as the Commission has recognized, that routing and gateway conditions bear a distinct relationship to the possible anticompetitive effects of the merger.

[32] Although Minneapolis & St. L. Ry. was decided in 1959, it is clear that only section 7 of the Clayton Act as enacted in 1914 was involved in that case and dealt with by the Court. See 361 U.S. at 185 & n. 11. The Court stated that "section 5(11) is both a more recent and a more specific expression of congressional policy than § 1 of the Sherman Act and § 7 of the Clayton Act. . . ." 361 U.S. at 186. However, the 1950 amendment to the section 7 of the Clayton Act is later in time than either section 5(11) or section 5(2) of the Interstate Commerce Act. Compare 15 U.S.C.A. § 18 (Historical note), with 49 U.S.C.A. § 5(2) (Historical note) and 49 U.S.C.A. § 5(11) (Historical note).

[33] 320 I.C.C. at 167. Compare 320 I.C.C. at 188. "We are convinced that these routing and gateway conditions will establish two balanced competitive systems in that area and will result in an increase rather than decrease in intramodal rail competition that will contribute to the present and future economic development of this important section of the Nation."

Moreover, we do not think routing and gateway conditions can be meaningful in terms of the "public interest" as affected by the Clayton

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Act unless they are imposed by reference to the product market and the geographic market. The Commission's primary concern is the "public interest," not "private interest." To impose routing and gateway conditions outside the context of the relevant markets either fails to employ Clayton Act standards as relevant to the public interest or assumes that private interest is consistently compatible with the public interest.

Therefore, we hold that the Commission must define the "line of commerce" and "section of the country" in which to appraise the probable competitive effects of the proposed merger and must determine whether the effect of the merger "may be substantially to lessen competition" or "tend to create a monopoly." The reason the Commission must make such findings is, most precisely, the fact that antitrust policy, to be given any effect whatsoever, must be measured in terms of criteria that have been developed by Congress and the courts.[34] If an erroneous statutory construction lies hidden in vague or insufficient findings then important statutory prerequisites to merger may be overlooked.[35]

Applying that holding to the present case, we conclude that the Commission has failed to make sufficient findings to accommodate section 5(2) of the Interstate Commerce Act with section 7 of the Clayton Act.

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[34] In a recent article Professor Handler and Mr. Robinson have noted that "whatever the guidelines for ascertaining whether a merger may have the proscribed anticompetitive effects, they are not in the legislative text and must inevitably be defined by the highest court." Handler & Robinson, *The Supreme Court v. Corporate Mergers*, Fortune, January, 1965.

[35] See United States v. Carolina Carriers Corp., 1942, 315 U.S. 475, 489.

[16]

The Commission's conclusion concerning the anticompetitive effects of the proposed merger is reflected in its following statement:

> "Except in portions of Florida, the over-all reduction in rail competition in the Southeastern States will be relatively moderate and inconsequential when viewed in the light of the alternative rail service that will be provided by competitors of the merged company at most of the major industrial centers in the affected area. With few exceptions, vigorous rail competition will continue to flourish in the territory served by the merged company. The impact of any lessening of rail competition that might result from this merger will be minimized by the increasingly strong competition that the merged company will encounter from other modes of transportation."

320 I.C.C. at 211, 212. The Commission noted that Tampa and the central and western portions of Florida are served by no other railroads except Seaboard and Atlantic Coast Line. It recognized that the merger would supplant the duopoly with a rail monopoly. 320 I.C.C. at 164-65. The Commission's conclusion that the reduction of rail competition caused by the proposed merger would not be substantial, 320 I.C.C. at 167, was determined by reference to rail competition in the Southeastern States as a whole.[36] Furthermore, the Commission

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[36] The Supreme Court has noted that "if anticompetitive effects of a merger are probable in 'any' significant market, the merger—at least to that extent—is proscribed. . . . [by section 7]. To illustrate: If two retailers, one operating primarily in the eastern half of the Nation, and the other operating largely in the West, competed in but two mid-Western cities, the fact that the latter outlets represented but a small share of each company's business would not immunize the merger [under section 7] in those markets in which competition might be adversely affected. On the other hand, that fact would, of course, be properly considered in determining the equitable relief to be decreed." Brown Shoe Co. v. United States, 1962, 370 U.S. 294, 337 & n. 65.

[17]

noted the growth in motor and water transportation service in recent years in Tampa and the surrounding area. See 320 I.C.C. at 152-53. And its conclusion that the reduction in competition that will result from the merger will have no appreciable injurious effect upon shippers and communities, 320 I.C.C. at 167, was apparently by reference to other modes of transportation—motor carriers, air carriers, water carriers and pipelines—operating in the Southeastern States.

It may be that the relevant geographical market is the Southeastern States as a whole. But the proper question to be asked in determining the appropriate "section of the country" is not where the parties to the merger do business or even where they compete, but where, within the area of competitive overlap, the effect of the merger on competition will be direct and immediate."[37] The geographic market selected must both correspond to the commercial realities of the industry and be economically significant. Although the geographic market in some instances may encompass the entire Nation, under other circumstances it may be as small as a single metropolitan area.[38]

It may be that the relevant service market includes modes of transportation other than railroads. But the fact

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that other modes of transportation operate within the geographic area or areas, within which the anticompetitive effects of a merger are to be judged, is not determinative of the relevant service market. Similarly, reference to tonnage and dollar aggregates to show the decline of railroad transportation and rise of other modes of transportation, and such statistics as the number of

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[37] United States v. Philadelphia Nat'l Bank, 1963, 374 U.S. 321, 357.
[38] See Brown Shoe Co. v. United States, 1962, 370 U.S. 294, 336-37.

truck registrations in an area, are not, in themselves, determinative. The outer boundaries of a service market are to be determined by the reasonable interchangeability of use or the cross-elasticity of demand between the service itself and substitutes for it. It should be noted, however, that within this broad market, well-defined submarkets may exist, which in themselves constitute service markets for antitrust purposes. The boundaries of such a submarket may be determined by examining such practical indicia as industry or public recognition of the submarket as a separate economic entity, the service's peculiar characteristics and uses, unique service facilities, distinct customers, distinct prices and sensitivity to price changes.[39]

The United States, acting through the Attorney General, requests that the merger of the Seaboard Air Line and Atlantic Coast Line be *permanently* enjoined. While a three judge district court has power to enjoin the *orders* of the

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Commission

authorizing a merger, we doubt if such a court has the power to permanently enjoin the *merger*. See 28 U.S.C. § 2321. Furthermore, the three-judge district court is limited to determining whether the Commission made any errors of law, whether its action was arbitrary, capricious, or an abuse of its discretion, and, upon review of the whole record, whether its findings of fact are supported by substantial evidence.[40] The United States' request that this Court permanently enjoin the merger would require that the Court go beyond the present record. We would have to find that upon no set facts

[39] See *id.* at 325. Thus it may be that railroads constitute at least a submarket for the transportation of heavy-loading, low value bulk commodities due to cost and service advantages available to railroads.

Just as a service submarket may have section 7 significance as the proper "line of commerce," so may a geographic submarket be considered the appropriate "section of the country." See *id.* at 336.

[40] See Brotherhood of Maintenance of Way Employees v. United States, 221 F.Supp. 19, 24, *aff'd mem.*, 375 U.S. 216 (1963).

which the applicants might present could the merger be found to be in the "public interest." For this Court to enjoin permanently the merger would require that we invade the long-established province of the Commission. Resolving such considerations is a complex task which requires extensive facilities, expert judgment and considerable knowledge of the transportation industry. The wisdom and experience of the Commission, not of the courts, must determine whether the proposed consolidation is "consistent with the public interest."[41] The United States' request for a permanent injunction against the merger is accordingly denied.

[20]

Intervening-plaintiff Railway Labor Executives' Association contends that the terms and conditions imposed by the Commission to protect the interests of the railroad employees affected are inadequate and violate section 5(2)(c)(4)[42] and section 5(2)(f)[43] of the Interstate Commerce Act and are

[41] McLean Trucking Co. v. United States, 1944, 321 U.S. 67, 87-88.

[42] "In passing upon any proposed transaction under the provisions of this paragraph, the Commission shall give weight to the following considerations, among others: . . . (4) the interest of the carrier employees affected." 49 U.S.C. § 5(2)(c)(4).

[43] "As a condition of its approval, under this paragraph, of any transaction involving a carrier or carriers by railroad subject to the provisions of this chapter, the Commission shall require a fair and equitable arrangement to protect the interests of the railroad employees affected. In its order of approval the Commission shall include terms and conditions providing that during the period of four years from the effective date of such order such transaction will not result in employees of the carrier or carriers by railroad affected by such order being in a worse position with respect to their employment, except that the protection afforded to any employee pursuant to this sentence shall not be required to continue for a longer period, following the effective date of such order, than the period during which such employee was in the employ of such carrier or carriers prior to the effective date of such order. Notwithstanding any other provisions of this chapter and chapters 8 and 12 of this title, an agreement pertaining to the protection of the interests of said employees may hereafter be entered into by any carrier or carriers by railroad and the duly authorized representative or representatives of its or their employees." 49 U.S.C. § 5(2)(f).

unsupported by adequate, clear, and precise findings. The Association requests that the orders of the Commission should be declared invalid on these grounds. The Association's request, as its brief recognizes, is based on the assumption

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that the Commission's orders authorizing the merger are otherwise approved. Since the Commission's orders must be enjoined for the reasons discussed above, consideration of the Association's contentions would be premature at this time.

The Commission found that under the merger plan the Mercantile-Safe Deposit and Trust Company will acquire power to control the merged company. It would be premature at this time for this Court to pass upon the question of whether Mercantile's power of control would be consistent with the public interest without requiring it to be considered as a carrier under section 5(3)[44] of the Interstate Commerce Act.

The orders of the Interstate Commerce Commission served December 13, 1963 and March 6, 1964 authorizing a merger of the properties and franchises of Atlantic Coast Line Railroad Company into Seaboard Air Line Railroad Company will be annulled and set aside and the enforcement of said orders enjoined, all without prejudice to further proceedings before and further findings and orders by the Commission not inconsistent with this opinion.

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[44] 49 U.S.C. § 5(3).

This the 13th day of May 1965.

Richard T. Rives
United States Circuit Judge

Bryan Simpson
United States District Judge

William A. McRae, Jr.
United States District Judge.

IN THE

United States District Court

FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

FLORIDA EAST COAST RAILWAY COMPANY, a corporation,
Florida East Coast Building,
St. Augustine, Florida,

Plaintiff,

versus

No. 64-64-Civ.J.

UNITED STATES OF AMERICA and
INTERSTATE COMMERCE COMMISSION,

Defendants.

Before RIVES, Circuit Judge, and SIMPSON and McRAE, District Judges.

JUDGMENT

Pursuant to the opinion of the court this day entered, IT IS ORDERED, ADJUDGED and DECREED by the court that the orders of the Interstate Commerce Commission served December 13, 1963 and March 6, 1964 authorizing a merger of the properties and franchises of Atlantic Coast Line Railroad Company into Seaboard Air Line Railroad Company, copies of which orders are attached to the original complaint in this cause, be and the same are hereby annulled and set aside and the enforcement of said orders is enjoined, all without prejudice to further proceedings before and further findings and orders by the Interstate Commerce Commission not inconsistent with the said opinion.

Done this the 13th day of May 1965.

Richard T. Rives
United States Circuit Judge

Bryan Simpson
United States District Judge

William A. McRae, Jr.
United States District Judge

APPENDIX B

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APPENDIX B

ORDER

At a Session of the
INTERSTATE COMMERCE COMMISSION
held at its office in Washington, D. C.,
on the 2nd day of December A.D. 1963.

Finance Docket No. 21215

SEABOARD AIR LINE RAILROAD COMPANY—MERGER—
ATLANTIC COAST LINE RAILROAD COMPANY

Finance Docket No. 21254

ATLANTIC COAST LINE RAILROAD COMPANY BONDS

Investigation of the matters and things involved in these proceedings having been made, a hearing having been held, oral argument having been heard, and the Commission, on the date hereof, having made and filed a report containing its findings of fact and conclusions thereon, which report and the report of the hearing examiner is hereby referred to and made a part hereof:

It is ordered, That the motions of several interveners that the application be dismissed, be, and they are hereby, denied;

It is further ordered, That the petition of Florida East Coast Railway Company for further hearing be, and it is hereby, denied;

It is further ordered, That subject to the terms, conditions and modifications referred to in the aforesaid report, (a) the merger of the properties and franchises of the Atlantic Coast

Line Railroad Company into the Seaboard Air Line Railroad Company (name to be changed to Seaboard Coast Line Railroad Company) for ownership, management and operation; (b) the acquisition by the latter of sole or joint control of carriers subsidiary to or affiliated with the Atlantic Coast Line Railroad

[2]

Company through ownership of stock or lease; (c) the acquisition by the Seaboard Air Line Railroad Company, as successor in interest, of trackage rights and joint use of certain lines of railroad now used by the Atlantic Coast Line Railroad Company; (d) the transfer of the outstanding motor carrier operating rights of Atlantic Coast Line Railroad Company to the Seaboard Air Line Railroad Company pursuant to the approved plan of merger; and (e) by virtue of such merger, the acquisition of control of Seaboard Air Line Railroad Company, the surviving corporation, by Atlantic Coast Line Company and, in turn, the acquisition of indirect control of Seaboard Air Line Railroad Company by Mercantile-Safe Deposit and Trust Company, be, and they are hereby, approved and authorized.

It is further ordered, That (a) the issuance by Seaboard Air Line Railroad Company of 3,839,345 shares of $20 per share par value common stock and scrip certificates representing fractional shares in conversion of outstanding capital stock of the Atlantic Coast Line Railroad Company pursuant to the aforesaid plan of merger, and (b) the assumption by the said Seaboard Air Line Railroad Company of the obligations and liabilities of the Atlantic Coast Line Railroad Company existing on the date of the merger, including obligations of companies subsidiary to or affiliated with the latter, which are contingently guaranteed either solely by Atlantic Coast Line Railroad Company, or jointly with other guarantors, upon the terms and for the purposes described, be, and they are hereby, authorized;

It is further ordered, That (a) the proposed Modification Indenture of the Atlantic Coast Line Railroad Company to the First, Second, Third and Fifth Supplemental Indentures, dated March 1, 1950, June 30, 1952, July 1, 1952, and March 1, 1955, respectively, to its General Mortgage dated March 1, 1950, modifying the sinking fund requirements with respect to its Bonds of Series A, B, C and D, in the manner and form set forth in the application filed in Finance Docket No. 21254 and in the proposed Modification Indenture, all as described in the aforesaid report, be, and

[3]

it is hereby, authorized, contingent upon and concurrent with the consummation of the merger herein authorized, and (b) the Commission's Orders of May 26, 1950, in Finance Docket No. 16961; April 10, 1952, in Finance Docket No. 17667; June 23, 1952, in Finance Docket No. 17791; and March 25, 1955, in Finance Docket No. 18874 be, and they are hereby, modified accordingly;

It is further ordered, That, except as herein authorized, the aforesaid securities shall not be sold, pledged, repledged, or otherwise disposed of by Seaboard Air Line Railroad Company, or by the Atlantic Coast Line Railroad Company, or by the merged company, unless or until so ordered or approved by the Commission;

It is further ordered, That nothing herein shall be construed to imply any guaranty or obligation as to said securities or dividends thereon on the part of the United States;

It is further ordered, That the merged company shall report concerning the matters involved herein in conformity with the orders of the Commission, Division 4, dated August 9, 1946, as amended, respecting applications filed under section 20a of the Interstate Commerce Act (49 CFR 56.4 and 56.6);

It is further ordered, That the merged company, when establishing changes in tariffs, rates and charges as may be required in effectuation of transactions approved herein may do so upon notice to this Commission and to the general public by not less than 10 days' filing and posting in the manner prescribed in section 6 of the Interstate Commerce Act, and shall in schedules making such changes refer to this order by date and docket number;

It is further ordered, That if the authority herein granted is exercised, the merged company shall submit for the consideration and approval of the Commission three copies of the journal entries required to record the transactions authorized herein;

[4]

It is further ordered, That this certificate and order shall become effective from and after 30 days from the date of service;

And it is further ordered, That, if the authority granted in the certificate herein is not exercised within one year from the effective date of this order, it shall be of no further force and effect.

By the Commission.

Harold D. McCoy
Secretary

(SEAL)

APPENDIX C

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APPENDIX C

SERVICE DATE
March 6, 1964

ORDER

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 4th day of March A. D. 1964.

Finance Docket No. 21215

SEABOARD AIR LINE RAILROAD COMPANY–
MERGER–
ATLANTIC COAST LINE RAILROAD COMPANY

Finance Docket No. 21254

ATLANTIC COAST LINE RAILROAD COMPANY BONDS

Upon consideration of the record in the above-entitled proceeding, of the petitions, filed January 13, 1964, on behalf of (a) Union Bag-Camp Paper Corporation, (b) Florida East Coast Railway Company, (c) Gulf, Mobile and Ohio Railroad Company, (d) Illinois Central Railroad Company (including request for oral argument), (e) Central of Georgia Railway Company and Savannah & Atlanta Railway Company, (f) Southern Railway Company et al., and (g) Railway Labor Executives' Association, for reconsideration of the report and order of December 2, 1963; and of the reply of applicants, filed February 3, 1964; and

It appearing, That the employee-protective conditions set forth in *Southern Ry. Co.–Control–Central of Georgia Ry. Co.*, 317 I.C.C. 557, as supplemented in 317 I.C.C. 729, were imposed herein; that on February 27, 1964, the said conditions

were clarified; and that such conditions as clarified are, and continue to be, applicable to this proceeding;

It further appearing, That, subject to certain restrictions, the Southern Railway Company operates over a line of the Atlantic Coast Line Railroad Company between Hardeeville, S. C., and Jacksonville, Fla., via Savannah, Ga., under trackage agreements with the said Atlantic Coast Line Railroad Company; that the said trackage agreements, as interpreted by the parties thereto, may preclude the Southern Railway Company from interchanging freight traffic at Savannah with either Central of Georgia Railway Company or the Savannah & Atlanta Railway Company in connection with movements to, from, or through the Jacksonville gateway;

It further appearing, That Condition 8, relating to the opening of the Jacksonville gateway by the merged company should be clarified and modified to require the Seaboard-Coast Line Railroad Company to provide the Central of Georgia Railway Company, the Savannah & Atlanta Railway Company and other affiliates and subsidiaries of the Southern Railway Company with the right to interchange freight traffic with the Southern Railway Company at Savannah in connection with movements to, from or through the Jacksonville gateway via the Hardeeville-Jacksonville segment;

And it further appearing, That, except as the petitions are granted for the purpose of the modification herein approved, the material matters set forth in the petitions have been considered by the Commission and discussed in its report, that the decision is based on adequate findings supported by the record, that there has been presented no error of fact or law with respect to the matters complained of by petitioners, that no showing has been made warranting reconsideration of the said decision, and that further oral argument is unnecessary:

[2]

It is ordered, That the proceeding be, and it is hereby, reopened for reconsideration solely for the purpose of modifying Condition No. 8 of the routing and gateway conditions; and that the said condition be, and it is hereby, modified as follows:

Condition No. 8, after the word "gateway" at the end of Condition No. 8, delete period, insert comma in lieu of period, and add the following:

and, *Provided further* that the Seaboard Coast Line Railroad Company shall take such further action as may be necessary to permit the interchange of freight traffic between Southern Railway Company and Central of Georgia Railway Company, Savannah & Atlanta Railway Company and other affiliates and subsidiaries of the Southern at Savannah in connection with movements to, from, or through the Jacksonville gateway by the Southern Railway Company under existing trackage arrangements permitting operations by that rail carrier between Hardeeville and Jacksonville over a line of the Seaboard Coast Line Railroad Company.

It is further ordered, That in all other respects the said petitions be, and they are hereby, denied.

And it is further ordered, That the order of December 2, 1963, as herein modified, shall become effective from and after 35 days from the date of service.

By the Commission.

HAROLD D. McCOY
Secretary

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APPENDIX D

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APPENDIX D

STATUTES INVOLVED

ADMINISTRATIVE PROCEDURE ACT
TITLE 5 U. S. CODE

SEC. 7 – HEARINGS

(c) EVIDENCE. – Except as statutes otherwise provide, the proponent of a rule or order shall have the burden of proof. Any oral or documentary evidence may be received, but every agency shall as a matter of policy, provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence and no sanction shall be imposed or rule or order be issued except upon consideration of the whole record or such portions thereof as may be cited by any party and as supported by and in accordance with reliable, probative, and substantial evidence. Every party shall have the right to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. In rule making or determining claims for money or benefits or applications for initial licenses any agency may, where the interest of any party will not be prejudiced thereby, adopt procedures for the submission of all or part of the evidence in written form.

SEC. 8 – DECISIONS

In cases in which a hearing is required to be conducted in conformity with section 7 –

(b) SUBMITTALS AND DECISIONS. – Prior to each recommended, initial, or tentative decision, or decision upon agency review of the decision of subordinate officers the parties shall be afforded a reasonable opportunity to submit for the consideration of the officers participating in such decisions (1)

proposed findings and conclusions, or (2) exceptions to the decisions or recommended decisions of subordinate officers or to tentative agency decisions, and (3) supporting reasons for such exceptions or proposed findings or conclusions. The record shall show the ruling upon each such finding, conclusion, or exception presented. All decisions (including initial, recommended, or tentative decisions) shall become a part of the record and include a statement of (1) findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record: and (2) the appropriate rule, order, sanction, relief, or denial thereof.

SEC. 10 – JUDICIAL REVIEW

Except so far as (1) statutes preclude judicial review or (2) agency action is by law committed to agency discretion–

(a) RIGHT OF REVIEW. – Any person suffering legal wrong because of any agency action, or adversely affected or aggrieved by such action within the meaning of any relevant statute, shall be entitled to judicial review thereof.

(c) REVIEWABLE ACTS. – Every agency action made reviewable by statute and every final agency action for which there is no other adequate remedy in any court shall be subject to judicial review. Any preliminary, procedural, or intermediate agency action or ruling not directly reviewable shall be subject to review upon the review of the final agency action. Except as otherwise expressly required by statute, agency action otherwise final shall be final for the purposes of this subsection whether or not there has been presented or determined any application for a declaratory order, for any form of reconsideration, or (unless the agency otherwise requires by rule and provides that the action meanwhile shall be inoperative) for an appeal to superior agency authority.

(e) SCOPE OF REVIEW. – So far as necessary to decision and where presented the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of any agency action. It shall (A) compel agency action unlawfully withheld or unreasonably delayed; and (B) hold unlawful and set aside agency action, findings, and conclusions found to be (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (2) contrary to constitutional right, power, privilege, or immunity; (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (4) without observance of procedure required by law; (5) unsupported by substantial evidence in any case subject to the requirements of sections 7 and 8 or otherwise reviewed on the record of an agency hearing provided by statute; or (6) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court. In making the foregoing determinations the court shall review the whole record or such portions thereof as may be cited by any party, and due account shall be taken of the rule of prejudicial error.

JUDICIARY AND JUDICIAL PROCEDURE
TITLE 28.–U. S. CODE

SEC. 1253–DIRECT APPEALS FROM DECISIONS OF THREE-JUDGE COURTS

Except as otherwise provided by law, any party may appeal to the Supreme Court from an order granting or denying, after notice and hearing, an interlocutory or permanent injunction in any civil action, suit or proceeding required by any Act of Congress to be heard and determined by a district court of three judges.

SEC. 1398—INTERSTATE COMMERCE COMMISSION'S ORDERS

Except as otherwise provided by law, any civil action to enforce, suspend or set aside in whole or in part an order of the Interstate Commerce Commission shall be brought only in the judicial district wherein is the residence or principal office of any of the parties bringing such action.

SEC. 2321—PROCEDURE GENERALLY; PROCESS

The procedure in the district courts in actions to enforce, suspend, enjoin, annul or set aside in whole or in part any order of the Interstate Commerce Commission other than for the payment of money or the collection of fines, penalties and forfeitures, shall be as provided in this chapter.

SEC. 2322.—UNITED STATES AS PARTY

All actions specified in section 2321 of this title shall be brought by or against the United States.

INTERSTATE COMMERCE ACT
TITLE 49—U. S. CODE

SEC. 5, PAR. (2).—UNIFICATIONS, MERGERS, AND ACQUISITIONS OF CONTROL

(a) It shall be lawful, with the approval and authorization of the Commission, as provided in subdivision (b)—

(i) for two or more carriers to consolidate or merge their properties or franchises, or any part thereof, into one corporation for the ownership, management, and operation of the properties theretofore in separate ownership; or for any carrier, or two or more carriers jointly, to purchase, lease or contract to operate the properties, or any part thereof, of an-

other; or for any carrier, or two or more carriers jointly, to purchase, lease, or contract to operate the properties, or any part thereof, of another; or for any carrier, or two or more carriers jointly to acquire control of another through ownership of its stock or otherwise; or for a person which is not a carrier to acquire control of two or more carriers through ownership of their stock or otherwise; or for a person which is not a carrier and which has control of one or more carriers to acquire control of another carrier through ownership of its stock or otherwise; or

(ii) for a carrier by railroad to acquire trackage rights over, or joint ownership in or joint use of, any railroad line or lines owned or operated by any other such carrier, and terminals incidental thereto.

(b) Whenever a transaction is proposed under subdivision (a), of this paragraph, the carrier or carriers or person seeking authority therefor shall present an application to the Commission, and thereupon the Commission shall notify the Governor of each State in which any part of the properties of the carriers involved in the proposed transaction is situated, and also such carriers and the applicant or applicants (and in case carriers by motor vehicle are involved, the persons specified in section 305(e) of this title), and shall afford reasonable opportunity for interested parties to be heard. If the Commission shall consider it necessary in order to determine whether the findings specified below may properly be made, it shall set aside application for public hearing; and a public hearing shall be held in all cases where carriers by railroad are involved unless the Commission determines that a public hearing is not necessary in the public interest. If the Commission finds that, subject to such terms and conditions and such modifications as it shall find to be just and reasonable, the proposed transaction is within the scope of subdivision (a) of this paragraph and

will be consistent with the public interest, it shall enter an order approving and authorizing such transaction, upon the terms and conditions, and with the modifications, so found to be just and reasonable: *Provided*, That if a carrier by railroad subject to this chapter, or any person which is controlled by such a carrier, or affiliated therewith within the meaning of paragraph (6) of this section, is an applicant in the case of any such proposed transaction involving a motor carrier, the Commission shall not enter such an order unless it finds that the transaction proposed will be consistent with the public interest and will enable such carrier to use service by motor vehicle to public advantage in its operations and will not unduly restrain competition.

(c) In passing upon any proposed transaction under the provisions of this paragraph, the Commission shall give weight to the following considerations, among others: (1) The effect of the proposed transaction upon adequate transportation service to the public; (2) the effect upon the public interest of the inclusion, or failure to include, other railroads in the territory involved in the proposed transaction; (3) the total fixed charges resulting from the proposed transaction; and (4) the interest of the carrier employees affected.

(f) As a condition of its approval, under this paragraph, of any transaction involving a carrier or carriers by railroad subject to the provisions of this chapter, the Commission shall require a fair and equitable arrangement to protect the interests of the railroad employees affected. In its order of approval the Commission shall include terms and conditions providing that during the period of four years from the effective date of such order such transaction will not result in employees of the carrier or carriers by railroad affected by such order being in a worse position with respect to their employment, except that the protection afforded to any employee pursuant to this sentence shall not be required to continue for a longer period,

following the effective date of such order, than the period during which such employee was in the employ of such carrier or carriers prior to the effective date of such order. Notwithstanding any other provisions of this chapter and chapters 8 and 12 of this title, an agreement pertaining to the protection of the interests of said employees may hereafter be entered into by any carrier or carriers by railroad and the duly authorized representative or representatives of its or their employees.

SEC. 5, PAR. (3).—NONCARRIER DEEMED CARRIER UPON ACQUIRING CONTROL

Whenever a person which is not a carrier is authorized, by an order entered under paragraph (2) of this section, to acquire control of any carrier or of two or more carriers, such person thereafter shall, to the extent provided by the Commission in such order, be considered as a carrier subject to such of the following provisions as are applicable to any carrier involved in such acquisition of control . . . sections 20a (2)-(11), and 314 of this title, (which relate to issues of securities and assumptions of liability of carriers), including in each case the penalties applicable in the case of violations of such provisions. In the application of such provisions of sections 20a and 314 of this title, in the case of any such person, the Commission shall authorize the issue or assumption applied for only if it finds that such issue or assumption is consistent with the proper performance of its service to the public by each carrier which is under the control of such person, that it will not impair the ability of any such carrier to perform such service, and that it is otherwise consistent with the public interest.

(11) The authority conferred by this section shall be exclusive and plenary, and any carrier or corporation participating in or resulting from any transaction approved by the Commission thereunder, shall have full power (with the assent, in the case of a purchase and sale, a lease, a corporate

consolidation, or a corporate merger, of a majority, unless a different vote is required under applicable State law, in which case the number so required shall assent, of the votes of the holders of the shares entitled to vote of the capital stock of such corporation at a regular meeting of such stockholders, the notice of such meeting to include such purpose, or at a special meeting thereof called for such purpose) to carry such transaction into effect and to own and operate any properties and exercise any control or franchises acquired through said transaction without invoking any approval under State authority; and any carriers or other corporations, and their officers and employees and any other persons, participating in a transaction approved or authorized under the provisions of this section shall be and they are relieved from the operation of the antitrust laws and of all other restraints, limitations, and prohibitions of law, Federal, State, or municipal, insofar as may be necessary to enable them to carry into effect the transaction so approved or provided for in accordance with the terms and conditions, if any, imposed by the Commission, and to hold, maintain, and operate any properties and exercise any control or franchises acquired through such transaction. Nothing in this section shall be construed to create or provide for the creation, directly or indirectly, of a Federal corporation, but any power granted by this section to any carrier or other corporation shall be deemed to be in addition to and in modification of its powers under its corporate charter or under the laws of any State.

NATIONAL TRANSPORTATION POLICY
TITLE 49—U. S. CODE

PRECEDING SECS.—1, 301, 901, AND 1001

It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regu-

lation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions;—all to the end of developing, coordinating, and preserving a national transportation system by water, highway and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy.

MONOPOLIES AND COMBINATIONS IN RESTRAINT OF TRADE TITLE 15—U. S. CODE

SEC. 18.—ACQUISITION BY ONE CORPORATION OF STOCK OF ANOTHER

No corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no corporation subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of another corporation engaged also in commerce, where in any line of commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly.

No corporation shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no

corporation subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of one or more corporations engaged in commerce, where in any line of commerce in any section of the country, the effect of such acquisition, of such stocks or assets, or of the use of such stock by the voting or granting of proxies or otherwise, may be substantially to lessen competition, or to tend to create a monopoly

. . . . . .

Nothing contained in this section shall apply to transactions duly consummated pursuant to authority given by the . . . Interstate Commerce Commission. . . .

SEC. 21—That authority to enforce compliance with sections 2, 3, 7, and 8 of this Act by the persons respectively subject thereto is hereby vested in the Interstate Commerce Commission where applicable to common carriers subject to the Interstate Commerce Act, as amended . . .

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Office Supreme Court, U.S.
FILED
AUG 6 1965
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

NO. 425

SEABOARD AIR LINE RAILROAD COMPANY, ATLANTIC COAST LINE RAILROAD COMPANY, et al.,

Appellants

v.

UNITED STATES OF AMERICA, FLORIDA EAST COAST RAILWAY COMPANY, et al.,

Appellees

On Appeal from the United States District Court for the Middle District of Florida

APPENDICES TO JURISDICTIONAL STATEMENT

VOLUME II

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PAGE

INDEX

JURISDICTIONAL STATEMENT

	Page
OPINIONS BELOW	2
JURISDICTION	2
STATUTES INVOLVED	3
QUESTION PRESENTED	4
STATEMENT OF THE CASE	5
Proceedings before the Commission	5
Proceedings in the District Court	11
THE QUESTION IS SUBSTANTIAL	13
CONCLUSION	30

APPENDICES TO JURISDICTIONAL STATEMENT
VOLUME I

APPENDIX A—Opinion and Final Judgment of the District Court	1
APPENDIX B—Order dated December 2, 1963, of Interstate Commerce Commission Approving the Merger	21
APPENDIX C—Order dated March 4, 1964, of Interstate Commerce Commission Approving the Merger and Denying Petitions for Reconsideration	25
APPENDIX D—Statutes Involved	29

APPENDICES TO JURISDICTIONAL STATEMENT
VOLUME II

APPENDIX E—Report and Recommended Order of Interstate Commerce Commission Examiner	1

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PAGE

APPENDIX E

Finance Docket No. 21215

SEABOARD AIR LINE RAILROAD COMPANY—MERGER—
ATLANTIC COAST LINE RAILROAD COMPANY

TABLE OF CONTENTS

THE APPLICANTS

4 Operations and property
7 Traffic handled
8 Valuations
8 Corporate status
9 Capital stock
10 Financial statements

PLAN OF MERGER

13 Agreement to merge

RELATED TRANSACTIONS

16 Affiliated companies
17 Assumption of obligations
17 Issuance of capital stock
18 Transfer of motor carriers
19 Supplemental application

APPLICANTS' EVIDENCE

21 Economics reports
22 Estimated savings
23 Changes in facilities
28 Abandonment of duplicate lines
31 Changes in routes et al.
33 Diversion of traffic
37 General economic considerations

SHIPPER AND PUBLIC EVIDENCE IN SUPPORT

40 Public relations efforts
40 Principal shipper evidence
46 Community and civic evidence

RAILROAD INTERVENERS

47 Florida East Coast, et al.
65 Southern Ry., et al.
79 Central of Georgia, et al.
86 Gulf, Mobile & Ohio
88 Illinois Central, et al.
93 Norfolk Southern
96 Appalachicola Northern, et al.
97 Stipulations with other railroads

OTHER INTERVENERS

97 Stock exchange ratio
104 Effect upon employees
120 Effect upon competition

122 PRIMARY FINDINGS

131 DISCUSSION AND CONCLUSIONS

133 Supplemental application
134 Benefits
136 Injuries
139 Abandonments
140 Transfer of lines
142 Divestiture
143 Employees
148 Competition

154 RECOMMENDATIONS

159 STATUTORY FINDINGS AND ORDER

INTERSTATE COMMERCE COMMISSION

Served August 24, 1962

NOTICE TO THE PARTIES

Exceptions, if any, must be filed with the Secretary, INTERSTATE COMMERCE COMMISSION, Washington, D. C., and served on all other parties in interest within 30 days from the date of service shown above, or within such further period as may be authorized for the filing of such exceptions. At the expiration of said period for the filing of exceptions, the attached order will become the order of the Commission and will become effective unless exceptions have been seasonably filed or the order has been stayed or postponed by the Commission. If exceptions are filed, replies to exceptions may be filed within 20 days after the final date for filing of exceptions. It should not be assumed that the recommended order has become effective as the order of the Commission until a notice to that effect, signed by the Secretary, has been served.

Finance Docket No. 21215

SEABOARD AIR LINE RAILROAD COMPANY—MERGER—
ATLANTIC COAST LINE RAILROAD COMPANY

Decided

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1. Motions to dismiss the application herein, denied.
2. (a) Merger of the properties and franchises;
(b) acquisition of sole or joint control of carriers subsidiary to or affiliated with, and trackage rights over and joint use of lines of other railroads;and
(c) transfer of the motor carrier operating rights of Atlantic Coast Line Railroad Company into the Seaboard Air Line Railroad Company (name to be changed to Seaboard

Coast Line Railroad Company), through acquisition of capital stock, and ownership, management, and operation pursuant to the plan of merger herein; and, by virtue of such merger, acquisition of control of Seaboard Air Line Railroad Company, the surviving corporation, by Atlantic Coast Line Company, a holding company, approved and authorized. Conditions prescribed.

3. Supplemental application of Mercantile-Safe Deposit and Trust Company, to acquire indirect control of Seaboard Coast Line Railroad Company and its common carrier subsidiaries and affiliates, by virtue of ownership of capital stock of Atlantic Coast Line Company, dismissed.

[2]

4. Authority granted to Seaboard Air Line Railroad Company to issue 3,839,345 shares of $20 par value common stock pursuant to the aforesaid plan of merger, and as of the date of such merger, to assume obligations and liabilities of the Atlantic Coast Line Railroad Company, and the companies subsidiary to or affiliated therewith, which are contingently guaranteed, either solely or with other guarantors, by Atlantic Coast Line Railroad Company. Conditions prescribed.

Harold J. Gallagher, Walter H. Brown, Jr., Charles T. Abeles, Richard A. Hollander, Edward W. Bourne, Prime F. Osborn, R. B. Gwathmey, Phil C. Beverly, Ned A. Beeker, John W. Weldon, and *Edwin H. Burgess* for applicants.

Walter R. McDonald, David O. Benson, A. V. Conlin, William F. Black, Norwood Johnson, and *James L. Graham, Jr.,* for regulatory agencies of the States of Georgia, Alabama, and Florida.

John D. Lane, Fred S. Gilbert, Jr., Page Haddock, T. C. Maurer, Walter C. Scott, Jr., John B. Miller, Reuben G. Grimm, Henry L. Walker, William D. McLean, Jack R. Turney, Jr., D. W. Markham, R. Allan Wimbish, Arthur J. Winder, E. B. Ussery, C. J. Collins, John W. Adams, Jr., E. B. DeVilliers, J. H. Wright, Howard D. Koontz, William H. Towle, James H. Dur-

kin, Joseph B. Cumming, Henry P. Eve, John C. Ashton, James L. Homire, Ralph L. McAfee, Thomas D. Barr, Laurance M. Hyde, Jr., W. L. Grubbs, J. W. Hoeland, C. H. Edwards, Clifford T. Coomes, and *Robert B. Claytor* for railway interveners in opposition, or, as their interests may appear.

Arthur H. Brown, J. D. Patterson, C. A. Johnpeter, J. L. Tompkins, C. H. Vescelius, Paul C. Sarrett, Bates B. Bowers, Fred H. Kent, J. Henry Blount, Horace Perry, Edwin Maner, Jr., A. Pratt Adams, Jr., Joseph Minotti, John H. Dewell, Robert L. Trohn, T. Hoyt Carlton, Halley B. Lewis, John W. Sognier, Malcolm Bell, Jr., M. H. McGowan, Fred R. Brannon, Jr., and *Dean Tooker,* for various shippers and receivers, and counties, municipalities, civic, and other organizations.

William G. Mahoney, Joseph A. Robie, James L. Highsaw, ford T. Croomes, and *Robert B. Clayton* for railway interveners organizations.

Henry J. Decker and *T. D. Geoghegan,* minority stockholders, for themselves.

E. Winslow Turner, Colin A. Smith, and *Maurice A. Fitzgerald* for the United States Department of Justice, Antitrust Division.

Clement T. Mayo for the United States Department of Defense.

REPORT AND ORDER

RECOMMENDED BY HYMAN J. BLOND, HEARING EXAMINER

The Seaboard Air Line Railroad Company (Seaboard),[1] the Atlantic Coast Line Railroad Company (Coast Line), common

[1]The names of applicants and interveners will be referred to by the distinguishing portion of their corporate names, or, by the abbreviations shown in parenthesis following their respective names.

carriers by railroad subject to part I of the Interstate Commerce Act, and The Atlantic Coast Line Company (ACL company), a non-carrier holding company subject to provisions of the act in respect of reports, accounting, and securities of carriers, on July 22, 1960 filed a joint application for authority under section 5(2) of the act, (a) to merge the properties and franchises of the Coast Line into Seaboard, which as the surviving corporation would change its name to Seaboard Coast Line Railroad Company (the merged company), and (b) for Seaboard to acquire sole or joint control of carriers subsidiary to or affiliated with Coast Line, through ownership of stock or lease including trackage rights over or joint use of railroad lines of certain carriers,[2] and, approval and authority under section 20a, in accord with the terms of the plan of merger executed by the applicants, for the merged company to issue its common stock, par value $20 per share, and to assume and be responsible for the liabilities and obligations of Coast Line.

By a supplemental application filed August 9, 1960, Mercantile-Safe Deposit and Trust Company (Mercantile), a non-carrier not subject to the act, joined as party applicant herein, contingent upon approval, authorization, and consummation of the foregoing proposed transactions. Matters pertaining to the interests of Mercantile and the relief sought in its application will be discussed hereinafter under an appropriate separate heading.

Several hundred resolutions, protests, and letters of objection to the proposals of the applicants were received, and the application and supplemental application were assigned for hearing and recommendation of an appropriate order accompanied by the reasons therefor. Pursuant to petitions filed prior to and during the course of the hearing, some 85 parties were

[2] As clarified at hearing, refers also to the outstanding motor carrier operating rights issued to Coast Line under part II of the act, Docket No. 23942 and sub numbers thereto.

permitted to intervene in support, in opposition, or, as the interests of the petitioners might appear. Many who were permitted to intervene failed to enter appearances at the hearing through counsel or otherwise. The interventions of such persons should be considered only as expressions in the nature of correspondence accompanying the record.

Public hearings opened November 28, 1960 and closed July 28, 1961, and 9 separate sessions were held on 35 days during that period. Sessions up to several days each were held at Richmond, Va., Tampa, Fla., Savannah, Ga., Montgomery, Ala., Atlanta, Ga., Miami, Fla., and Washington, D. C.

At the close of the hearing the examiner announced he would not request the filing of briefs. On August 15, 1961, 10 intervener railroads filed a stipulation agreeing not to file briefs to the hearing examiner, and the applicants agreed

[4]

to restrict their brief to specified topics that might be covered by interveners not party to the stipulation. The agreement reserves to each party thereto the right to renew and argue any exception or position of record at a suitable time subsequent to the service of the examiner's report and recommended order. Briefs were filed by the applicants on limited issues, and on behalf of Florida East Coast Railway Company, Apalachicola Northern Railroad Company and St. Joe Paper Company, an owner of Coast Line stock, an owner of Seaboard stock, Railway Labor Executives' Association, and the United States Department of Justice.

THE APPLICANTS

Railroad operations and properties. The principal lines of railroad of Seaboard extend from its northernmost terminals at Richmond and Portsmouth, Va., southerly to Jacksonville,

Tampa, St. Petersburg, Miami and Homestead, Fla. Other lines from Atlantic Coast and other eastern points extend in a westerly direction from Wilmington to Rutherfordton, N. C.; from Monroe, N. C., to Atlanta, Ga., and Birmingham, Ala., from Savannah, Ga., to Montgomery, Ala., with a branch to Macon, Ga.; and from Jacksonville to Chattahoochee (River Junction), Fla. From Tallahassee, Fla., a line extends in a northerly direction to Richland and Columbus, Ga. Seaboard's principal points of interchange with other railroads are Richmond, Portsmouth, and Petersburg, Va., Charlotte, Bostic, Durham, and Pinoca, N. C., Greenwood, S. C., Howells (Atlanta), Savannah, Athens, Columbus, Macon, Vidalia, and Kingsland, Ga., Birmingham and Montgomery, Ala., and Jacksonville, Tampa, and Chattahoochee, Fla. Terminal facilities are owned at the ports of Portsmouth, Wilmington, Charleston, S. C., Savannah, and Jacksonville, Tampa, and Boca Grande, Fla.

The principal lines operated by Coast Line extend from its northernmost points at Richmond and Pinners Point, Va., in generally southerly and westerly directions to Wilmington, Spartanburg, S. C., Atlanta and Albany, Ga., Birmingham and Montgomery, and Jacksonville, St. Petersburg, and Tampa, Fla., with various intermediate branch lines and a network of connecting lines within the central and western areas of Florida. Coast Line's principal points of interchange are Richmond, Pinners Point, and Petersburg, Selma, Goldsboro, Fayetteville and Wadesboro, N. C., Columbia and Spartanburg, S. C., Augusta, Savannah, Albany, Atlanta, Oglethorpe and Tifton, Ga., Birmingham and Montgomery, and Jacksonville and Chattahoochee. Coast Line owns terminal facilities at the ports of Norfolk, Va., Charleston, Wilmington, Savannah and Brunswick, Ga., and Jacksonville. A wholly owned subsidiary, the Atlantic Land and Improvement Company, owns terminal facilities at Port Tampa, Fla., including a modern elevator for loading phosphate into ships.

Seaboard and Coast Line each operate through freight trains in conjunction with the lines and services of practically every

[5]

railroad reaching the areas and points served by the applicants. Traffic which originates at or is delivered to Washington, D. C., and points north and east of that gateway moves beyond Richmond over the line of the Richmond, Fredericksburg and Potomac Railroad Company (Potomac company), which is controlled through stock ownership by a separate corporation, the stock of which is jointly owned by the using railroads. Seaboard and Coast Line each own a one-sixth interest in the Potomac company. They each operate through passenger trains between points in Florida on the one hand, and, on the other, the major eastern cities including New York, Philadelphia and Washington, in connection with the Potomac company and the Pennsylvania Railroad. Coast Line serves points on the east coast of Florida via its connection at Jacksonville with the Florida East Coast Railway Company (East Coast).

The applicant railroads each have varying proportionate ownership of capital stock of other carriers by railroad, and terminal and other railroad service companies. Appendix "A," attached hereto, lists the names of such related companies, and the percentage of their stocks owned by Seaboard and Coast Line, respectively, as of March 31, 1960. Seaboard wholly owns and operates as a separate subsidiary railroad, the Tavares and Gulf Railroad Company, between Tavares and Winter Garden, Fla., 38 miles. Coast Line operates several wholly owned subsidiaries as separate carriers.[3] These include the

[3]The Charleston & Western Carolina Railway Company (Western Carolina), between Spartanburg, S. C., and Augusta, Ga., about 342 miles, which theretofore had been operated as a separate company, merged into Coast Line, December 31, 1959, pursuant to **Atlantic Coast Line R. Co.—Merger—Charleston & W. C. Ry. Co.**, 307 I.C.C. 614.

East Carolina Railway, between Farmville and Tarboro, N. C., 29 miles; the Rockingham Railroad Company between Rockingham and Gibson, N. C., 20 miles; and the Virginia and Carolina Southern Railroad Company between St. Paul and Lumberton, N. C., 27 miles. Also operated by Coast Line as jointly owned subsidiaries are the Columbia, Newberry & Laurens Railroad Company, 75 miles, the capital stock of which is owned 80 percent by Coast Line and 16.67 percent by Seaboard; and the Winston-Salem Southbound Railway Company, 98 miles, the stock of which is owned 50 percent each by Coast Line and the Norfolk & Western Railway Company.

Coast Line controls the Louisville & Nashville Railroad Company (L-and-N) through ownership of 33.69 percent of its capital stock as of May 15, 1960. That control has continued since 1902, when Coast Line acquired 51 percent of the then outstanding stock. L-and-N's lines (about 5,696 miles) and those of Coast Line connect physically at Birmingham, Bessemer, Montgomery, and Talladega, Ala., Atlanta, Ga., and Chattahoochee, Fla.

[6]

By virtue of a lease initially executed in 1899, Coast Line and L-and-N jointly control and operate the Georgia Railroad which extends from Atlanta to Augusta with branches to Macon, Washington, and Athens, Ga., approximately 321 miles. Pursuant to authorization dated June 3, 1924 in *Clinchfield Railway Lease,* 90 I.C.C. 113, Coast Line and L-and-N are joint lessees of the Carolina, Clinchfield and Ohio Railway (Clinchfield) for a term of 999 years. Clinchfield's lines extend from Elkhorn City, Ky., to Spartanburg, S. C., 292.93 miles. Also corporately related to Coast Line are the Atlanta and West Point Rail Road Company, the lines of which extend from Atlanta to West Point, Ga.; and the Western Railway of Alabama, extending beyond West Point to Montgomery and Selma, Ala., about 225 miles.

The applicants have facilities and provide service at 121 common points, and they actively compete for traffic to and from such points. At 64 of the points commonly served are facilities for physical interchange of traffic between the lines of Seaboard and Coast Line. By states, 24 of the latter points are located in Florida, 15 in South Carolina, 11 in North Carolina, 6 in Georgia, 5 in Virginia, and 3 in Alabama. In addition to the points where Seaboard and Coast Line both provide service, Seaboard serves 92 points which also are served by railroads other than Coast Line, and Coast Line serves 51 points served by railroads other than Seaboard.

The lines operated by Seaboard at the end of 1959 totaled 4,146.62 miles, of which 3,855.97 were owned by Seaboard, 258.12 miles were leased from other railroads (all but 59.51 miles being the property of wholly owned subsidiaries), and 32.53 miles operated under trackage rights. The lines operated by Coast Line at the end of 1959 totaled 5,573.07 miles, of which 5,406.27 miles were owned by Coast Line (93.57 miles being those of proprietary companies), 50.78 miles were leased, and 22.45 miles operated under trackage rights. Adjusting the above mileages to reflect changes due to retirements and reclassification of portions of the lines, and the elimination of 1,012.85 miles of line which would be the subject of abandonment applications following consummation of the merger, the merged company would operate 9,809 miles of line, of which 5,637 miles would be Coast Line's present trackage, and 4,172 miles would be that of Seaboard. Of the trackage retained approximately 36 percent of Seaboard's mileage and 33 percent of Coast Line's would be situated in Florida, and in the other states involved, the relative ratios between the companies would be (Seaboard ratios first): Georgia 22, 20 percent, South Carolina 18, 19 percent, North Carolina 15, 19 percent, Alabama 5, 6 percent, and Virginia 4, 3 percent.

As of December 31, 1959, Seaboard's rolling equipment included 430 road diesel units, 96 yard switching diesel units, 28,389 freight train cars, and 455 passenger train cars.

[7]

Coast Line's equipment included 474 road and 123 yard diesel units, 29,857 freight train cars (including 2,776 leased cars), and 562 passenger train cars. These totals do not include equipment of separately operated affiliated companies.

Traffic handled. Coast Line and Seaboard both serve the major industrial and agricultural centers within the states where they operate. The number of tons of the commodities most predominant among those handled by the applicants, (1,000,000 tons or more) the revenues thereon, and the average revenue per ton, during 1959, for each applicant are as follows:

SEABOARD AIR LINE

Commodity	*Tons*	*Revenue*	*Revenue Per Ton*
Phosphate rock	10,263,059	$15,162,699	$1.48
Stone & rock: broken, ground and crushed	8,190,094	7,733,208	.94
Pulpwood	5,965,762	8,068,231	1.35
Bituminous coal	4,674,166	6,667,886	1.43
Gravel and sand	3,935,940	3,864,571	.98
Fertilizers, NOS	1,915,575	6,151,030	3.21
Cement: Natural and Portland	1,600,038	3,282,974	2.05
Paperboard, fiberboard and pulpboard	1,519,470	8,017,523	5.28
Clay and bentonite	1,169,687	4,027,164	3.44
Total principal commodities	39,233,791	$62,975,286	$1.60

All other carload commodities	12,445,154	72,493,492	5.83
Less than carload traffic	88,759	2,671,060	30.09

ATLANTIC COAST LINE

Phosphate rock	9,966,131	$12,246,782	$1.23
Stone & rock: broken, ground and crushed	6,172,442	5,578,512	.90
Pulpwood	5,628,483	7,921,700	1.41
Gravel and sand	5,505,188	5,578,666	1.01
Bituminous coal	3,372,214	6,013,360	1.78
Fertilizers, NOS	2,752,255	9,011,227	3.27
Cement: Natural and Portland	1,363,630	3,456,840	2.54
Products of agriculture, NOS	1,103,275	599,714	.54
Paperboard, fiberboard, and pulpboard	1,037,640	5,216,717	5.03
Total principal commodities	36,901,258	$55,623,518	$1.51
All other carload commodities	13,753,064	72,740,844	5.29
Less than carload traffic	123,034	3,389,392	27.55

[8]

Transportation of passengers, mail, express and allied traffic during 1959 accounted for 13.7 percent of Coast Line's total operating revenues, and 13.4 percent of Seaboard's.

Valuation—railroad properties. All the railroad properties of Seaboard and Coast Line are involved in the proposed merger. In the tabulation immediately following, are shown the recorded valuations of the properties of each as determined by the Commission for rate-making purposes as of June 30, 1918 for Seaboard, and June 30, 1917 for Coast Line. Also shown are valuations as of June 30, 1915 pertaining to the properties

of the Western Carolina referred to in footnote, *supra*. Generally, the totals reflect appropriate adjustments heretofore necessary to give effect to various acquisitions and other changes which, from time to time, were combined to form the present Seaboard and Coast Line systems. Separately shown is the net cost of additions and betterments to the properties of each since the date of valuations found by the Commission to March 31, 1960.

	Seaboard°	*Coast Line*†	*C&WC Ry*‡
Carrier property (except lands — Reproduction cost — New	$125,658,791	$163,790,642	$ 9,822,675
Carrier lands and rights	19,526,137	24,154,501	1,872,895
Non-carrier property land and improvements	2,959,658	4,295,806	222,358
Total owned property including land & rights as of valuation dates	148,144,586	192,240,949	11,917,928
Road and equipment	191,047,796	183,328,390	8,297,333
Net increase in property additions and betterments valuation dates to March 31, 1960	407,378,746	367,605,979	(Note 1.)

°Valuation date — June 30, 1918 — 35 Val. Rep. 337 (394).
†Valuation date — June 30, 1917 — 38 Val. Rep. 503 (584).
‡Valuation date — June 30, 1915 — 121 I.C.C. 721 (749).
(Note 1). — Western Carolina net additions and betterments embraced in total shown for Coast Line.

Corporate status. Seaboard was incorporated in Virginia in 1944 to acquire and operate the properties of a predecessor

[9]

corporation and its subsidiaries upon emergence from receivership. *Seaboard Air Line Ry. Co. Receivership,* 261 I.C.C. 689, decided June 28, 1946. With its predecessors, Seaboard has engaged in railroad transportation for more than 100 years. It is not controlled by any other corporation or corporations.

Coast Line's principal predecessor was incorporated in Virginia in 1836 under another name. The present corporation has resulted from mergers and consolidations with various railroad corporations initially organized in other states, but Coast Line retains domestic status only in Virginia. It is controlled by the ACL company through ownership of a substantial portion of capital stock.

The ACL company was organized in Connecticut in 1889 under another name. It has engaged in the investment business continuously since its incorporation. In 1929, its charter was amended specifically excluding any power to engage in railroad transportation. In Finance Docket No. 15015, *Atlantic Coast Line R. Co. Purchase,* 261 I.C.C. 820, not printed in full, decided December 22, 1945, the Commission found that the ACL company had control of the Coast Line within the meaning of the act, and should be considered as a carrier subject to certain provisions of the act relating to required accounting and filing of reports.

There are no intercorporate relationships between Seaboard and Coast Line. They have no officers or directors in common. Several officers and directors of each also serve in similar capacities with respect to various affiliated companies commonly owned by Seaboard and Coast Line. Within the related Coast Line corporations herein, several directors and officers serve more than 1 company. Of the members of the board of the ACL company, 5 individuals also are directors of Coast Line.

Except that the assistant secretary of the ACL company also serves as secretary of Coast Line, there are no officers in common.

Capital Stock. Seaboard presently is authorized to issue 500,000 shares of preferred stock of $100 par value per share, none of which has been issued, and 10,000,000 shares of common stock of $20 par value. Coast Line is authorized to issue 150,000 shares of preferred stock of $100 par value, 1,554 shares of which are designated as "Original Preferred Stock," and the remainder as "Series Preferred Stock," and 4,000,000 shares of common stock of no par value. None of the Series Preferred Stock has been issued. Except that 1,212 shares of common stock of Seaboard, represented by unexchanged certificates, have no voting power, each share of stock of the respective applicants is entitled to 1 vote. The number of shares of capital stock of each class issued and outstanding as of the date shown, the respective par value per share, and the number of stockholders of record of each applicant, are as follows:

[10]

Applicant	Class	Outstanding	Par Value	Date	Stockholders
Seaboard	Common	4,837,192 (*)	$20	6-17-60	16,935
Coast Line	Common	2,632,806 (†)	No par	5- 4-60	5,623
Coast Line	pref'd	1,554	$100.	5- 4-60	
ACL Company		705,600	No par	5- 4-60	1,373
Mercantile		272,500	$20.	6-17-69	2,976

*Includes 63,541 shares previously issued and reacquired and held in the treasury reserved for purposes of Seaboard's Restricted Stock Option Plan, approved by the stockholders in December 1952.

†Includes 68,650 shares previously nominally issued and reserved for issuance pursuant to Coast Line's Restricted Option Plan, approved by the stockholders in April 1958.

Ownership by the applicants of the capital stock of other of the applicants and related carriers, shown as of May 15, 1960, includes the following: Coast Line beneficially owns 823,427 shares or 33.69 percent of the outstanding capital stock of the L-and-N; ACL company beneficially owns 933,200 shares or 35.46 percent of the common stock of Coast Line and 922 shares of its original preferred stock.

Financial statements. Attached hereto as Appendix "B" is a tabulation showing in separate columns the general balance sheet statements of August 31, 1960, for (1) Seaboard, (2) Coast Line, (3) Seaboard and Coast Line combined, (4) accounting adjustments to give effect to the acquisition of Coast Line, and (5) the adjusted and combined pro-forma general balance sheet of the merged company. The pro-forma statement represents the combining of the asset and liability accounts of the merging applicants, and a recomputation of the shareholders' equity accounts on the basis of the merger being authorized and consummated as proposed. The equity of the shareholders of the merged company is computed to eliminate the value of Coast Line's present preferred and common stock issues and substitute the par value of the capital stock which would be issued in exchange for Coast Line's present shares. The excess of the stated value of Coast Line's shares over the par value of the merged company's shares is added to the merged company's capital surplus account. The accounting shown in the pro-forma balance sheet column is not to be construed as recommended for approval at this time, but, will be subject to consideration upon submission of statements showing all expenditures and the accounting entries proposed to record the merger and related transactions, as required by the order herein.

[11]

The contingent liabilities of Seaboard and Coast Line arise primarily under obligations of each as guarantors jointly and

severally with other railroads in regard to the following: First mortgage bonds of the Jacksonville Terminal Company, each in the amount of $3,764,000; first mortgage bonds of the Richmond Terminal Company, $2,552,000 each; and the conditional sale agreement of the Norfolk and Portsmouth Belt Line Railroad Company, each in the amount of $88,765, comprising one-eighth of the total sum of $710,116. Further, Seaboard and Coast Line, together with other proprietary companies, each are contingently liable to advance specified proportions of certain sums required by Trailer Train Company for the repayment of principal and interest obligations aggregating $58,542,016. Coast Line also has contingent liability obligations under guarantees jointly and severally with the L-and-N pertaining to the following: First mortgage bonds of the Clinchfield (lessor), $17,886,000; equipment obligations of the Clinchfield in operation of leased properties, $11,359,815; equipment obligations of the Georgia Railroad in its operation of leased properties, $2,301,343; and equipment obligations of the Atlanta & West Point Railroad Company, $840,769.

The long-term debt of Seaboard and Coast Line, are as follows:

Seaboard—due within 1 year	
Equipment obligations	$ 9,242,134
First mortgage, series B, 3s due 5-1-80	104,291
Sinking fund debentures, 3-7/8s due 9-1-77	759,000
Long term debt due within 1 year-Total	$ 10,105,425
Seaboard—due after 1 year	
First mortgage, series B, 3s, due 5-1-80	$ 26,622,709
Sinking fund debentures, 3-7/8s due 9-1-77	14,400,000
Total funded debt	41,022,709
Equipment obligations	69,587,000
Long term debt due after 1 year-Total	$110,609,709

Coast Line—due within 1 year

Equipment obligations	$ 9,326,017
General mortgage, series A, 4s due 3-1-80	102,000
Notes re purchase of real estate	136,848
Long term debt due within 1 year-Total	$ 9,564,865

[12]

Coast Line—due after 1 year

General unified mortgage series A, 4½s due 6-1-64	$ 32,176,000
General mortgage, series B, 4s due 6-1-64	40,000
General mortgage, series A, 4s due 3-1-80	23,096,000
General mortgage, series B, 4½s due 6-30-72	17,778,000
General mortgage, series C, 4½s due 7-1-72	16,006,000
General mortgage, series D, 3⅝s due 3-1-80	12,601,000
Bank Loans - various, 4¾% interest due 12-31-60	11,812,500
Notes re purchase of real estate	547,391

Charleston & Western Carolina Ry. Co.

First consolidated series A, 5s due 1-1-64	1,589,000
First consolidated series C, 4½s due 1-1-64	3,162,000
Total funded debt	118,807,891
Equipment obligations	62,722,018
Long term debt due after 1 year-Total	$181,529,909

The foregoing list of long-term obligations of Seaboard exclude certain bonds in the amount of $253,000, and sinking fund debentures in the amount of $141,000, which are held in the company's treasury. The list of Coast Line's long-term debts excludes bonds held in its treasury of $207,000 value under three Coast Line mortgages, $2,779,151 under a Western Carolina mortgage, and $8,450,000 of a series of Coast Line

bonds only nominally issued. Likewise excluded from Coast Line's obligations are certain bonds which are pledged. These include an aggregate amount of $100,448,000 of three series pledged under Coast Line's general mortgage, $575,000 pledged under the Georgia Railroad lease, and $13,500,000 of bonds pledged as collateral for bank loans.

Attached hereto as appendix "C" are Seaboard's Income Statements, and its Retained Income — Unappropriated accounts for each year 1955 through 1959 and for 8 months ended August 31, 1960. Comparable statements for the same years and period of 1960 pertaining to Coast Line are attached as appendix "D". These statements include adjustments in the summaries for each year prior to the corporate changes, to embrace appropriate data pertaining to the Macon, Dublin & Savannah Railroad Company which was absorbed by Seaboard on March 1, 1958, and the Western Carolina which merged into Coast Line.

The operating expense items include depreciation charges amounting each year to approximately 2.34 million dollars by Seaboard, and 1.87 million dollars by Coast Line charged as maintenance of way and structure expenses, and approximately 7.74 million dollars and 8.10 million dollars, respectively, as maintenance of equipment expenditures. The account have

[13]

been adjusted to give effect to Federal income tax deferments resulting from accelerated amortization in excess of normal depreciation, and other reductions in depreciation reserves credited to annual railway tax accruals. The accumulated amounts of tax reduction realized because of accelerated amortization and accelerated depreciation at August 31, 1960 were $33,132,000 and $1,745,000, respectively, pertaining to Seaboard, and $24,812,027 and $793,519, respectively, pertaining to Coast Line.

PLAN OF MERGER

Agreement to merge. By individual actions, the boards of directors of Seaboard and Coast Line, on May 19, 1960, approved and adopted a "Plan of Merger," specifying the terms and conditions upon which Coast Line would be merged into Seaboard, the name of which would be changed to Seaboard Coast Line Railroad Company. The merged company would continue to exist as a corporation chartered in Virginia. Consummation of the plan is contingent upon appropriate corporate consents and authorizations by the stockholders of the constituent railroad companies, and upon approvals and authorizations required from Federal and State regulatory bodies having appropriate jurisdiction. In turn, a "Certificate of Merger of the Constituent Corporations," required pursuant to Virginia statutes would be sought, and when obtained, its effective date would fix the date of the merger. The separate existence of Coast Line (with certain statutory exceptions) would cease, and the merged company would be the sole surviving corporation.

The parties reserve the right to terminate the agreement at any time prior to the merger date, (1) by their mutual consent, (2) by either railroad upon the breach by the other of provisions relating to restrictions upon the payment of dividends; the incurring of obligations other than in the ordinary course of business; the issuance of shares or options to give shares of any class of capital stock; or, otherwise failing to maintain their respective financial position as good as existed on April 30, 1960, (3) in the event a majority of the members of the board of either railroad find unacceptable any conditions imposed by the Commission upon its approval of the merger, or, (4) in the event either railroad is unable to secure Internal Revenue Service rulings assuring that no gain or loss or taxable income would result as a consequence of the merger.

The merged company would become possessed of all the rights powers, and franchises of the constituent railroad companies and would be vested with all the properties, debts, subscriptions to shares, and other choses in action belonging to or due to either railroad, and, without further act or deed would succeed to title to the real estate interests of each company. It would be responsible and liable for the obligations of Seaboard and Coast Line, and would be substituted in their stead as the party of interest in any existing claims or actions by or against either railroad.

[14]

Upon the merger date, the stated capital of the merged company would be equivalent to the aggregate of the amount of the stated capital of Seaboard immediately preceding the merger date, on the basis of $20 per issued share, plus $20 per share for each share of common stock of the merged company issuable in conversion of the outstanding capital stock of Coast Line. The surplus of each applicant, other than any which might be transferred by the merged company to stated capital, would continue without change as surplus of the merged company available for the payment of dividends.

Each share of capital stock of Seaboard outstanding on the merger date, including shares held in its treasury, would continue as a share of common stock of the merged company, and the presently issued certificates for such stock would continue to be valid without surrender or exchange. Each share of Coast Line's original preferred stock ($100 par value) issued and outstanding on the merger date would be converted into 3 fully paid and non-assessable shares of the merged company's common stock ($20 par value). The shares of Coast Line's common stock issued and outstanding on the merger date, including shares reacquired and held in the treasury to satisfy unexercised options granted under its existing stock option

plan, would be converted to 1.42 shares of common stock of the merged company, which would be fully paid and nonassessable. Shares of Coast Line's capital stock held in its treasury, except pursuant to the stock option plan, would be retired and canceled upon the merger taking effect.

After the merger date, upon presentation and surrender for cancellation by the present holders of stock certificates of Coast Line, certificates of the merged company would be delivered in amounts equivalent to the number of full shares of the merged company's stock after conversion. Upon surrender and conversion of Coast Line's original preferred stock, payment would be made for any accrued unpaid dividends.

Scrip certificates, in bearer form, would be delivered to represent fractional shares of stock resulting from the conversion of the existing common stock of Coast Line. Rules for the exchange of the fractional shares within 2 years after the merger, and for their surrender or forfeiture within 4 years thereafter, are provided as customary in this type of stock exchange. Shares of Coast Line stock represented by certificates not exchanged prior to 18 months after the merger date would lose entitlement to vote at stockholders' meetings and to receive dividends, unless and until they are exchanged as provided by the plan of merger.

Generally, the existing corporate charter and by-laws of Seaboard, subject to amendments to conform with details of the plan of merger herein, define the corporate existence, purposes, powers, and franchises of the merged company. The merged company would exist under the Restated Articles of Incorporation of the Seaboard Coast Line Railroad Company, conferred under the laws of Virginia.

[15]

The more important of the amendments to the by-laws would provide that the board of directors of the merged com-

pany would consist of 26 members which, by amendment of the by-laws from time to time could be decreased to not fewer than 7 members; and that the executive board annually would appoint an executive committee and a finance committee, each to consist of the incumbent chairman of the board of the merged company, its president, and 4 additional members of the board. The initially appointed executive committee and finance committee each would include 3 persons who, immediately prior to the merger date, had been members of the boards of Seaboard and 3 persons theretofore members of the board of Coast Line. The first chairman of the executive committee would be the person who had served as chairman of the executive committee of Coast Line, and the first chairman of the finance committee would be the person who until the date of the merger had served as chairman of the executive committee of Seaboard.

The plan of merger names as the first chairman of the board of directors of the merger company, Mr. John W. Smith, president of Seaboard, and as first president of the merged company, Mr. W. Thomas Rice, president of Coast Line. In the event Mr. Smith or Mr. Rice are not available to assume those positions on the date of merger, the persons succeeding to their present positions would become the chairman of the board and the president of the merged company, respectively. The names and addresses of the individuals who would comprise the initial board of directors of the merged company also are listed in the plan of merger. Among those named are 13 of Seaboard's present board of directors of 17 members, and 13 of Coast Line's present 15 directors. The names shown are reproduced in Appendix "E" attached hereto, and in separate columns are shown the applicant or applicants with which each person heretofore served as director, and the executive position each held, if any.

The stockholders of Seaboard and Coast Line, at indi-

vidual special meetings held August 18, 1960 pursuant to appropriate notices for the purpose of considering the plan of merger, voted its approval and adoption. The votes as recorded are as follows:

Shares of capital stock	Seaboard	Coast Line
Number of shares entitled to vote	(*) 4,835,980	2,634,781-c 1,554-p
Shares represented at meeting	4,291,763	2,461,498-c 1,095-p
Votes favoring plan of merger	4,274,608	2,457,652-c 1,095-p
Votes opposing plan of merger	17,115	3,846-c
Ratio of shares outstanding favoring	88.3%	93.2%

(*)-Date of record to vote -- July 14, 1960.
c -Coast Line's common stock.
p -Coast Line's original preferred stock.

[16]

As contemplated in the plan of merger, other consents were secured as follows: (A) The Internal Revenue Service of the United States Treasury Department by letter dated June 30, 1960, expressed rulings that no gain or loss would be recognized (a) as to Seaboard or Coast Line as a result of the transaction, (b) as to the shareholders of Coast Line upon the exchange of their stock, or, (c) as to the shareholders of Seaboard whose stock would not be changed; and (B) pursuant to negotiations to modify the sinking fund payment requirements under Coast Line's First, Second, Third, and Fifth Supplemental Indentures to the General Mortgage and the Series A, B, C, and D bonds issued thereunder, the trustees and Coast Line agreed to appropriate changes of the language in pertinent articles of the supplemental indentures.

The proposed modification would place Coast Line's sinking fund requirements in balance with those of Seaboard, which require fixed sinking fund payments, and relieve the merged company from being required to commit up to 12.5 percent of its net earnings to satisfy the existing sinking fund obligations of Coast Line. On August 12, 1960, holders of Coast Line's General Mortgage Bonds, series A, B, C, and D, approved and adopted the proposed modifications, separately for each class of bonds, by votes ranging from 79.05 percent to 97.69 percent in favor of the changes. Seaboard's board of directors at a special meeting on June 27, 1960, accepted the form and substance of the Modification Indenture as described hereinabove.

In a separate proceeding filed by Coast Line on August 25, 1960,[4] approval and authorization of the aforesaid modification instrument is sought. Consideration thereof will be held in abeyance pending disposition of the merger proceeding herein. Nothing in the preceding discussion is to be construed as a judgment on the merits of the indenture in question.

RELATED TRANSACTIONS

Interests in affiliated companies. Coincident with consummation of the proposed merger, the merged company would acquire through stock ownership, such sole or joint control of other carriers as Coast Line might hold immediately prior to the date of the merger. It also would acquire all the direct and indirect interests which those carriers have in other carriers or their properties. The subsidiary carriers involved, and the percent ratio of Coast Line's stock ownership in each as of March 31, 1960, are specified in the second list shown in Ap-

[4] Finance Docket No. 21254 for modification of orders of May 26, 1950 in Finance Docket No. 16961; April 10, 1952 in Finance Docket No. 17667; June 23, 1952 in Finance Docket No. 17791; and March 25, 1955 in Finance Docket No. 18874.

pendix "A" hereto. The merged company also would succeed to the existing lease interests of Coast Line which cover joint rights involving the properties of the Clinchfield, and the Georgia Railroad. In addition, on the date of the merger it would acquire Coast Line's existing trackage rights over, or joint use of the railroad lines of other carriers, as follows:

[17]

Name of carrier	Termini of line	Miles of railroad
Tampa Southern RR Co.	Uceta to Belspur, Fla.	58.07
Fort Myers Southern RR Co.	Fort Myers to Naples, Fla.	35.50
Central RR Co. of S. Carolina	Lanes to Sumter, S.C.	40.20
South Carolina Pacific Ry Co.	N. Car. State Line to Bennettsville, S.C.	16.58
Richmond Terminal Ry Co.	Richmond, Va.	0.96
Goldsboro Union Station Co.	Goldsboro, N.C.	0.38
Savannah Union Station Co.	Savannah, Ga.	3.76
Central of Georgia Ry Co.	Augusta, Ga.	0.02
Augusta & Summerville RR Co.	Augusta, Ga.	0.54
Augusta Union Station Co.	Augusta, Ga.	0.26
Albany Passenger Term. Co.	Albany, Ga.	0.24
Jacksonville Terminal Co.	Jacksonville, Fla.	1.99
Tampa Union Station Co.	Tampa, Fla.	0.31
Louisville & Nashville RR Co.	Montgomery, Ala.	0.61
Louisville & Nashville RR Co.	Atlanta, Ga.	1.70
Virginia Carolina Chemical Corp.	Pinners Point, Va.	0.60
East Carolina Ry.	Tarboro, N.C.	0.51
Virginia & Carolina Sou. RR Co.	Hope Mills, N.C.	0.52
Southern Ry Co.	Goldsboro, N.C.(*)	2.73
Southern Ry Co.	Brunswick, Ga.(*)	2.36

(*) Yard switching tracks

Assumption of obligations. Under the merger plan, the merged company would be responsible and liable for all the obligations and liabilities of Coast Line existing on the date of merger. As of March 31, 1960, the amounts which would be assumed would include mortgage bonds $232,661,151, notes, including those covering the purchase of real estate $7,771,738, equipment trust certificates $9,252,000, and conditional sale agreements $51,239,932. Together, the encumbrances shown

total $300,924,821, which includes holdings in Coast Line's treasury or pledged in the amount of $125,752,151, and net total encumbrances $175,172,670.

The merged company also would assume obligation and liability in respect of certain securities and obligations of companies related to Coast Line which are contingently guaranteed by Coast Line, either solely or jointly with other guarantors. Attached hereto as appendix "F" are separate lists identifying (1) each of the mortgage obligations and the amounts of the remaining indebtedness of Coast Line, respectively, as of March 31, 1960, and (2) the names and maturity dates of certain mortgage, equipment trust certificates, and conditional sale agreements in regard to which Coast Line is contingently liable as guarantor.

Issuance of capital stock. On behalf of the proposed merged company, Seaboard seeks authorization under section 20a of the act, to issue 3,839,345 shares of $20 par value common stock. The shares would be issued in conversion and exchange for Coast Line's outstanding (as of March 31, 1960) 1,544 shares of $100 par value original preferred stock, and 2,700,481 shares of no-par value common stock (consisting of 2,631,831 shares held by the public and 68,650 shares authorized to be issued under the exercise of options granted under Coast Line's restricted option plan). Under the agreed plan on conversion, Seaboard's outstanding common stock would be increased from 4,898,950 shares to 8,738,295 shares. Following the conversion the present holders of Seaboard

[18]

stock would hold 4,898,950 shares of the merged company's capital stock, and the present owners of Coast Line preferred and common stock would hold 3,839,345 shares. The stated capital value of the outstanding shares would increase from $97,979,000 to $174,765,900.

Transfer of motor carrier certificates. Coast Line is not affiliated with and does not own stock of any motor carrier. Under effective certificates issued under part II of the act, it engages in specified transportation service as a common carrier by motor vehicle. The outstanding certificates, and the general scope of the authorities, as described by the Commission, are as follows:

MC No.	Date Issued	Points and/or areas of service
23942	Jan. 30, 1942	Yonges Island—Ravenel, S.C.; (*) Tampa—Port Tampa, Fla.
—Sub 1	Nov. 14, 1950	(Richmond, Va.) and (designated points in North Carolina). (†)
—Sub 3	June 25, 1957	(Designated points in North and South Carolina) and (Waycross, Ga.); (Brunswick, Ga.) and (Atlanta, Ga., Birmingham and Montgomery, Ala.); (Dupont and other points in Georgia) and (designated points in Florida); (Waycross, Ga., Jacksonville, Fla.) and (designated points in Florida); Certain routes for operating convenience only.
—Sub 4	Sep. 4, 1952	Rocky Mount—Plymouth, N.C.
—Sub 5	Apr. 6, 1956	Washington—Bethel, N.C.; Certain alternate routes in North Carolina.

(*) Denotes "between" points named "and" other points named.
(†) Denotes "between points on the one hand" and other points named "on the other hand."

Under the described operating rights, Coast Line is authorized to utilize motor vehicles to transport general commodities with certain exceptions, subject to restrictions specified in regard to each route described. Among other limitations, the service must be auxiliary to or supplemental of railroad service at Coast Line railroad stations along highways parallel to the railroad routes, and the traffic must move under through bills of lading in joint rail-motor service to and from points beyond those named in the certificates. In addition, the rights generally are restricted against service between many of the principal stations and points served by Coast Line, described

as "key points". Such include 1 specified point in Virginia, 4 each in North Carolina and South Carolina, 6 in Georgia, 5 in Alabama, and 10 points in Florida. No motor carrier authority is held affecting highway routes parallel to the rail lines of the former Western Carolina, the East Carolina Railway, the Rockingham Railroad, or, the Virginia & Carolina Southern Railroad. Operations over Coast Line's highway routes are operated with equipment leased from the Railway Express Agency or from commercial truck rentals concerns which also furnish drivers.

[19]

In the event the proposed merger is approved and authorized, the applicants request appropriate authorization to transfer the motor carrier operating rights of Coast Line to the merged company to the extent necessary to permit continuation of the present truck operations of Coast Line. While certain of the described routes presently are not operated by Coast Line, due to changes in circumstances since their issuance, request is made that all the outstanding operating rights be transferred to the merged company.

Supplemental application. By virtue of its supplemental application herein, Mercantile requests authority to acquire control of the merged company and its common carrier subsidiaries and affiliates to the extent, if any, that Mercantile presently holds control of ACL company, Coast Line, and Seaboard through ownership of capital stock of each. Mercantile, which does not have charter power to engage in the transportation business and holds no form of authorization from this Commission, requests that it not be considered as a carrier subject to the provisions of the Interstate Commerce Act. It is a closely held banking and trust institution, which by merger in 1953, succeeded to the interests of two trust companies incorporated in Maryland in 1864 and 1884, respectively. Generally, the term "Mercantile" as used herein

refers to the present corporation or its predecessor, the Safe Deposit & Trust Company.

Mercantile's trust division acts as trustee, executor, guardian, or agent under various trust estates. Continuously for many years, officials and directors of Mercantile have had membership on the boards and have been officers of ACL company and Coast Line.

Under 218 separate accounts involving various representative capacities, as of July 13, 1960, Mercantile held 390,369 shares or 55.3 percent of the stock of ACL company, and beneficially owned 4,725 shares or 0.7 percent of such stock; under 169 accounts it held 145,129 shares or 5.5 percent of the common stock of Coast Line, and beneficially owned 30 shares of its original preferred stock; and under 73 accounts it held 29,314 shares or 0.6 percent of Seabord's stock. In various fiduciary or agency capacities Mercantile holds 19,480 shares of stock of the L-and-N, and beneficially owns 1,000 shares of such stock. Mercantile exercises the voting rights relating to shares of stock which it owns beneficially, and those which it holds as sole trustee. Likewise, with the consent of any joint trustees, or approval of the principals, it votes the shares held as co-trustee and as agent.

[20]

Computed on the basis of the ratio of exchange provided in the merger plan, ACL company (which owns 933,200 shares of Coast Line's common stock and 1,010 shares of the original preferred stock together constituting approximately 35.4 percent of the stock of Coast Line) after the merger would own 1,328,174 shares or approximately 15.2 percent of the capital stock of the merged company. Any control over the merged company which Mercantile might possess in the future necessarily would be exercised through ACL company which is subject to the jurisdiction of the Commission. Additionally,

after the merger, Mercantile's direct ownership of the stock of the merged company would amount to approximately 235,487 shares, or 2.7 percent.

Attached hereto as appendix "G" is a tabulation showing the nature of Mercantile's fiduciary and beneficial holdings of the stock of each applicant carrier, the number of shares held or owned in each category on July 13, 1960, the number of fiduciary accounts involved, and the percentage which such holdings are of the total number of shares outstanding. The same information regarding Mercantile's interests in the stock of the merged company after applying the exchange ratio also is shown.

Under deeds of trust created by the will of a past president of Mercantile, ACL company, and Coast Line, who died in 1931, 313,989 shares of ACL company's stock and 133,884 shares of Coast Line's common stock became vested in Mercantile as sole trustee. The holdings have been reduced by distributions under the deeds and will so that in July 1960, the trusts embraced 240,100 and 73,276 shares, respectively. Of such remaining totals, in order shown, 94,197 and 17,664 shares are to be surrendered upon the death of the survivor of 2 persons, the younger of whom (at the time of the hearing) was approximately 64 years of age; and 75,358 and 14,131 shares would be surrendered upon the death of the last survivor of 3 persons, the youngest of whom was approximately 75 years of age. When the events take place, Mercantile's holdings in all capacities would be reduced from 395,094 shares of ACL company stock and 145,129 shares of Coast Line's common stock to 225,539 and 113,334 shares, respectively. In that manner, Mercantile's stock interest in ACL company would be reduced from about 56 percent to about 32 percent, and the remaining interest (except 0.7 percent) would continue to be subject to the provision of similar fiduciary requirements.

The president of Mercantile, a vice-president of its trust division, and assistant secretary and an assistant treasurer also are officers of the ACL company. The president of Mercantile, serves as a member and chairman of the executive committee of the boards of the ACL company and Coast Line. Additionally, he holds positions as chairman of the executive committee of the board, and director of the

[21]

L-and-N. Another director of Mercantile, ACL company, and Coast Line also is a director of L-and-N. Among other directors and officers of Mercantile and its trust division are 4 individuals who serve as directors, executive committee members, and/or officers of 7 railroads subject to the act,[5] none of which are related to Seaboard or Coast Line.

Aside from small holdings of securities of other railroad that might be included in the fiduciary accounts administered by Mercantile, it owns minor amounts of capital stock of railroads other than those related to Seaboard and Coast Line, discussed hereinabove. Included are about 2,000 shares of stock of the Southern Pacific Company, acquired upon conversion of certain bonds of that company, and less than 1,000 shares of preferred stock of the Baltimore & Ohio Railroad.

APPLICANT'S EVIDENCE

Economics Reports. Realization of the possibility that financial and operational advantages might accrue from consummation of a corporate merger and physical consolidation of the properties and franchises of Seaboard and Coast Line,

[5]The Canton Railroad Company, Philadelphia, Baltimore & Washington Railroad, Baltimore & Ohio Railroad Company, Central Railroad of New Jersey, Baltimore & Ohio Chicago Terminal Railroad Company, Cincinnati, Indianapolis & Westefn Railroad, and Lehigh & Hudson River Railway.

initially arose during the course of conferences in September 1958 between the presidents of those railroads. Exploratory studies indicated that a formal merger could provide the means of eliminating separately owned duplicative facilities of the railroads, and the combining of transportation operations and services to an extent not attainable under separate operation, or, under any other form of amalgamation. Discussion by the officers with the separate boards of the applicants resulted in the securing of preliminary approvals. Desiring to accumulate and coordinate all the essential factual data necessary to determine the feasibility of proceeding toward a merger, in October 1958, Seaboard and Coast Line together engaged two outside organizations to plan and supervise exhaustive studies in concert with the applicants' respective staffs. Operating and engineering aspects of the studies and consideration of the economics of a consolidation, if feasible, were referred to Wyer, Dick and Company (Wyer), and Coverdale and Colpitts (Coverdale), each a leading transportation and engineering consultant firm with considerable experience in merger and reorganization transactions and other major proposals involving railroad corporations. Generally, the work in developing various phases of the studies was divided between these consultants in the interest of expediting completion of the project and avoiding duplication of their separate efforts.

[22]

The subjects which the consultants investigated first were discussed with and agreed upon by a steering committee, whose members were the senior assistant to the president of Coast Line, the vice president — finance and accounting of Seaboard, the vice president of Railway Advisory Services, (a public relations firm whose members are retired officials of the applicants) the senior partner of Coverdale, and the president of Wyer. The committee outlined and directed the work of the appropriate departments and personnel of the

applicants in the gathering and tabulation of statistics and other data required in the programmed studies. It also instigated and approved with the concurrence of the department heads involved, so-called "procedure sheets" which governed the mechanics of accumulating and preparing data, and the theories, assumptions, and formulae to be utilized in arriving at conclusions and recommendations.

The joint report of Wyer and Coverdale, entitled "Report on Economics of Proposed Consolidation," was submitted to the managements of Seaboard and Coast Line, on February 23, 1960. Embraced are 18 definitive studies and 6 related appendices, which purport to support the estimates, conclusions, and recommendations developed by the consultants. The applicants presented the report as its principal supporting document, and adduced considerable evidence in proof of the substance thereof.

Estimated savings. The aggregate effect of the principal advantages to the merged company contemplated by the engineer-operations consultants, adjusted to reflect current general economic and railroad traffic conditions as of January 1, 1960, show the following:

Estimated ultimate annual increase in net income before Federal income taxes	$38,732,624
Estimated gross cash required to give effect to the proposed consolidations	$66,178,231
Estimated cash realizable from salvage, abandonments, nonrecurring income tax savings, etc.	$67,462,598
Net cash realizable from consolidations	$ 1,284,367

On the basis of the savings potentiality as computed, the consolidated operations would benefit the merged company by an increase of 1.4 percent in net revenues and a simultaneous decrease of 2.2 percent in gross ton-miles operated. The merged company would operate 11.3 percent less mileage and

employ 15.3 percent fewer persons, and, its operating ratio would be reduced from the combined Seaboard and Coast Line ratio of 80.9 percent to approximately 70

[23]

percent, an improvement of about 10.9 percent. Attached hereto as appendix "H" is a tabulation showing the adjusted net results of each of the component studies and the related net cash requirements, if any.

The estimated savings would not be fully realized until after a period of transition during which the various features of the consolidation would be completed and become operative. The estimates indicate that complete fulfillment would occur during the fifth year, and that the progress made in realizing the savings and the cumulative requirements for cash to proceed with the merger, as of the end of each of the first 5 years after approval, would be as follows:

ESTIMATED CUMULATIVE RESULTS OF MERGER

End of year	Annual savings	Percent attained	Gross cash required	Gross cash realized
First	$ 7,396,252	19	$24,979,030	$17,963,811
Second	19,472,686	50	52,038,116	45,584,339
Third	31,039,931	80	62,448,059	60,840,462
Fourth	35,727,737	92	65,878,610	65,763,813
Fifth	38,732,624	100	66,178,231	67,462,598

Changes in facilities. Seaboard and Coast Line each own separate station and terminal facilities at 75 points which they both serve, of which, 5 such common points are in Virginia, 9 in North Carolina, 14 in South Carolina, 6 in Georgia, 3 in Alabama, and 38 in Florida. Studies and field surveys reveal that substantial savings would be derived by consolidation of the facilities at 67 of the common points (33 in Florida). Included

in the recommendations are the construction of extensive new facilities at Jacksonville, Atlanta, Savannah, and Tampa, at a cost estimated to aggregate $23,394,336. The total cost of consolidation at the remaining 63 common points would be $3,300,116, and the cost of relocating existing facilities at these points studied would total $269,001. The estimated cost would be offset by the amount of $10,039,631 comprising the value of properties recovered; $7,050,035 nonrecurring income tax savings $2,246,903; and avoidance of foreseeable extraordinary expenditures $742,693. Considering the cost of the capital required to complete the consolidation of stations and terminals at 5 percent, or $246,189, the amount of savings in connection with all the projects contemplated would be $3,926, 799. Cash requirements in excess of the cash realizable from salvage and other materials released at the common points would total $16,923,822.

[24]

Modification of existing yards and facilities at Richmond, Charleston, Savannah, Atlanta, Birmingham, and Jacksonville would be undertaken to combine the applicants' operations and permit use in whole or in part, of the properties of one applicant and elimination of the other's corresponding tracks, yards, and terminals. Such proposals, and similar changes at Wilmington and Tampa, (details not shown in the report) would result in annual net savings, and produce cash in excess of the cost of instituting the changes, or require additional cash, as follows:

Common point	*Annual savings*	*Cash realized*
Richmond	$ 516,428	$ 625,134
Charleston	281,696	369,139
Savannah	773,076	583,433
Atlanta	528,849	213,531
Birmingham	238,517	735,724

Jacksonville	1,181,773*	19,217,183†
Wilmington	156,558	93,076
Tampa	779,000	411,219†

*denotes net loss annually.

†denotes cash required in excess of cash recoverable from materials, etc.

The proposed consolidation at Jacksonville, in terms of prospective annual savings and cash requirements appears to be wholly disadvantageous, and requires a detailed explanation. Involved in the considerations are two main lines of each applicant, each of which serves points in Florida. Seaboard's lines converge at Gross, Fla., and Coast Line's converge at Waycross, Ga., and one line of each extends via Jacksonville to points south and west thereof. Seaboard has main freight yards at Jacksonville and Baldwin, and also uses yards at Savannah for combining and segregating traffic to and from Jacksonville and other points in Florida. Coast Line's main freight yards are at Jacksonville, Waycross, and High Springs. A new modern hump retarder yard, with 84 classification tracks, would be constructed at Jacksonville to handle the combined through traffic of the applicants as well as the interchange traffic of the East Coast railway, and the classification of Jacksonville industrial traffic. Between 4,000 and 4,600 cars per day would be handled. The new yard would be located north of Coast Line's Baldwin line, and its construction would permit retirement of yards and tracks within Jacksonville, including Coast Line's "C" yard,

[25]

enginehouses, car repair tracks, buildings, and other facilities at Moncrief; the major portion of Seaboard's West Jacksonville yard; and one track of Seaboard's double track main line between Beaver Street and Milldale. Additionally, Coast Line's yard facilities at Waycross and High

Springs would be reduced in size; the double tracks lines between Jesup and Burroughs, Ga., and between Folkston, Ga., and Callahan, Fla., would be changed to single track; and the line between Jesup and Folkston would be abandoned. Likewise, Seaboard's switching requirements at Savannah would be reduced and the Baldwin yard and the line between Callahan and Baldwin would be abandoned.

Such additional net savings attributable to the new yard is estimated to be $3,727,764, and cash realized would be $4,805,788. Together, the changes at Jacksonville and at affected terminals beyond Jacksonville would permit through movement of solid trains to Richmond for delivery to the Potomac company with no terminal handling at points enroute. Considered as a single related consolidation, the net savings from all sources produced by construction of the yard at Jacksonville would be $2,545,991, or, the equivalent of 17.7 percent return on the net investment of $14,411,395.

As separate independent railroads, Seaboard and Coast Line each maintains offices and headquarter organizations for its various departments and divisions. Each also has numerous off-line offices. The comparable offices of each perform the same functions, and, necessarily many of the facilities are duplicative. Based upon office employment and payrolls on January 1, 1959, and other expenses during 1958 pertaining to the existing organizations, annual net savings by consolidation of the general offices in the manner proposed, would be as follows:

Salaries and wages	$ 7,600,944
Payroll taxes and fringe benefits	1,329,405
Other related expenses	1,097,194
Total savings	$10,027,543

The employees of Seaboard and Coast Line at the offices, departments, and divisions where savings would be feasible by

consolidation of the facilities and forces involve 3,954 employees with monthly salaries aggregating $2,220,224. The merged company would function with 2,850 employees having monthly salaries estimated to total $1,586,812. The savings so produced would be equivalent to approximately 28.5 percent of the present costs. Annual expenses incurred at the offices in question, exclusive of

[26]

salaries and wages, presently aggregate $4,076,072. After the proposals take effect the merged company would incur annual expenditures of $2,978,878, the equivalent of savings of approximately 26.9 percent of the present costs involved.

Consolidation of the handling of less-carload freight by railroad and by truck in conjunction therewith would provide savings of $83,137 annually, in addition to the savings accruing from combining the facilities and forces involved, which are discussed hereinabove. Seaboard's transfer facilities at Hamlet and in the new Jacksonville yard would be utilized, and Coast Line's facilities at 4 points would be discontinued. Added costs aggregating $40,976 would result from duplicate handling in some instances of lading which heretofore had been handled only once. Studies of truck routes operated by Seaboard and Coast Line show that 51 routes in place of 55 routes operated presently would be required, and that the change in such operations would contribute $85,592 savings to the net result shown.

The savings to accrue from the pooling of operating and heavy repair equipment of Seaboard and Coast Line as an element of the proposed merger are summarized as follows:

Item	*Annual Savings*	*Cash Realized*
Freight train cars	$750,334	$ —
Passenger train cars	313,979	95,381
Locomotives	736,767	1,458,231
Work equipment, etc.	293,148	469,439

Likewise, the merged company would enjoy savings generated by the pooling of general repair facilities and forces used in making heavy repairs to various types of operating equipment. Heavy repair work would be consolidated according to the type of equipment and repairs, as follows: Locomotives at Jacksonville; work equipment at West Jacksonville; wheel and axle work, and repair of roadway maintenance equipment at Hamlet; and freight and passenger cars at Waycross, where also would be located the general scrap yard. The present shops at Portsmouth, Rocky Mount, and Tampa would be abandoned. The proposed pooling of the heavy repair equipment would permit annual savings to the merged company of $2,174,877; and $916,664 additional cash would be required in excess of the cash realizable for salvage and other credits.

[27]

Savings of similar nature would accrue from consolidation of the stores facilities of the applicants and reducing the levels of materials and supplies inventories. The merged company's principal storehouses would be situated at 8 points. Including various related items of nonrecurring savings, the proposed consolidation would provide $6,075,506 cash to the merged company. Annual savings would be realized on the basis of 5-percent interest on the amount saved, plus reductions in payrolls and payroll tax expenses, and elimination of various employee benefits.

The property, franchise, and license taxes paid to the various states by Seaboard and Coast Line in 1958 totaled $9,641,097. Estimates show that the annual state taxes of the merged company would increase about $1,000,000 after all the proposed savings have been realized.

The cumulative cost of providing pensions, group life insurance, and hospitalization, surgical, and major medical in-

surance for officers, supervisors, and other employees not subject to labor organization contracts also would be affected by the proposals herein. Estimates are based upon employment levels contemplated to prevail when the merger is fully in force, but, at prices based upon 1959 cost levels. Where the benefits of the two companies vary, the best features of each present plan are to be adopted by the merged company. In total, the changes proposed in each fringe benefit plan and the additional annual costs for covering the approximately 2,400 employees involved, would be as follows:

Plan	*Combined Present Cost*	*Proposed Cost*	*Added-Cost*
Pensions	$341,000	$ 636,000	$295,000
Group life insurance	209,000	204,000	5,000*
Hospitalization, etc.	420,000	432,000	12,000
Totals	$970,000	$1,272,000	302,000

*Denotes reduced cost or savings.

Other general areas where savings advantages would be realized incidental to the proposed consolidation of stations and terminals, elimination of duplicative facilities, abandonment of lines, and the utilization of shorter and more economical routes for normal operations, include systemwide pooling of freight and passenger cars, locomotives, and roadway maintenance equipment; elimination of the supplying of cars separately by Seaboard and Coast Line to major users and to connecting short line railroads for prospective loading; rearrangements of service to reduce or eliminate

[28]

delays in handling of traffic; reduced car rental payments; consolidation of roadway maintenance work equipment and avoidance of purchase of new equipment presently contemplated; reduced number of company business cars; and similar types of savings by oper-

ations of one railroad system in lieu of two systems. Partially in the nature of offsets to the foregoing savings, are losses of revenues for the performance of switching services not required because of the elimination of the movement of noncompetitive traffic formerly requiring switch movements between the applicants' respective lines, and loss of the differences between tariff charges for movement from the terminal of one applicant to that of the other, and for switching within the consolidated terminal of the merged company. Losses also would be incurred in conjunction with rents of buildings and other properties, miscellaneous revenues, other rental income, and income from nonoperating properties. Estimates, based upon 1958 charges and revenues, within the areas affected, indicate decreases in switching revenues, rentals, and miscellaneous revenues in the amount of $194,636, and increases in freight revenue and rental income related to operating property becoming available for lease at points where facilities are consolidated, would total $76,708, which would produce a net loss to the merged company of $117,928.

Abandonment of duplicate lines. In certain locations, the lines of Seaboard and Coast Line generally closely parallel each other, and, at other places the lines are not parallel but serve the same area and points. Physical consolidation of the properties of the applicants in conjunction with the proposed merger would permit some of the lines to be abandoned, in whole or in part, without impairment of ability to maintain good service to affected important shipping and receiving points, and without substantial loss of revenues or increased expenses. Of 59 lines or segments considered amenable to such action, abandonment was found feasible in 48 instances involving approximately 1,013 miles of line, including 516 miles of line of Coast Line and 497 miles of Seaboard's. Additionally, small segments of line aggregating 44 miles, all situated within terminals at the common points, would be eliminated.

In the aggregate, the estimated financial results of the abandonment of the 1,013 miles of line, would as follows: Salvage of recoverable materials $14,645,436; cost of new connecting lines and other construction $3,048,024; nonrecurring income tax savings $7,102,486; and increased net cash $20,201,730. The abandonments would effect increased net income before taxes in the amount of $7,334,698 annually and permit the avoidance of expenditures for foreseeable maintenance and rehabilitation costs in the amount of $1,676,062.

[29

Among the principal abandonments recommended are Seaboard's lines between Charleston and Bridge Junction near Savannah, 86.18 miles, and between Lumpkin, Ga., and Montgomery, 96.42 miles; and Coast Line's cut-off line between Jesup and Folkston, 53.23 miles. In lieu of the Charleston-Savannah route of Seaboard, Coast Line's line, which is 8 miles longer, would be the main line of the merged company. The arrangement would avoid low, swampy terrain and eliminate many bridges which caused high maintenance costs. In lieu of the Lumpkin-Montgomery line, the merged company would provide service over Coast Line's line through Bainbridge, Ga. Seaboard's present line between Callahan and Savannah would be the merged company's main route for freight and passenger traffic moving north and south; and Jesup, Nahunta, and Folkston, on the parallel cut-off of Coast Line would continue to be served by other of the merged company's lines.

[30]

Attached hereto as appendix "I," is a tabulation of the lines or portions of lines recommended by the consultants for abandonment, and for each, the mileage of Seaboard or Coast Line affected; estimates of revenues that would be lost annually if the lines are abandoned; cash requirements or cash realized from the project giving effect to savings pertaining to the avoid-

ance of extraordinary expenditures, cost of property acquisitions and relocations, and nonrecurring income tax savings; and annual net savings after adjustment to reflect the receipt or payment of interest at 5 percent on the cash required or realized.

Because of the anticipated reduction in mileage of the merged company compared to the applicants' combined present mileage, the proposed abandonments would make available for release, 3 yard locomotives and 32 road locomotives presently in operation. Also, in the event the described abandonments are applied for and permitted, the merged company would be able to eliminate 1,622 highway and city-street grade crossings presently existing on the lines of Seaboard and Coast Line. Among those eliminated would be 654 in Florida, 377 in South Carolina, 274 in North Carolina, 127 in Georgia, 105 in Alabama, and 85 in Virginia.

The application herein does not embrace requests for certificates of public convenience and necessity to permit abandonment of any lines or portions of lines. Applicants' executive officers asserted that decisions as to seeking permission to abandon the lines in question would be held in abeyance until after the proposed merger is approved. The final determinations on abandonment applications would be based upon business judgments in light of circumstances prevailing after other aspects of the statutory merger and consolidation of properties of the applicants are effectuated.

For the reason that the effect of the recommended abandonments upon the present and future public convenience and necessity would be outside the scope of the merger application herein, the examiner rejected offers by various interveners of evidence regarding the abandonments mentioned. Several of the interveners in opposition requested dismissal or denial of the application in its entirety on grounds that a substantial por-

tion of the contemplated savings relate directly or indirectly to the financial benefits that would be derived if the abandonments were permitted. Prior to effecting any abandonments, substantial savings would accrue from the consolidation of stations and terminals, elimination of separate trains of the applicants which duplicate freight and passenger service; consolidation of general offices, departments, divisions, off-line offices, heavy repair facilities, and other properties; institution of shorter routes and elimination of interchange between the applicants; pooling of less-carload traffic, and pooling of equipment and inventories of materials and supplies.

[31]

Many of those savings could be achieved as quickly as the combining of the administrative organizations of the applicants is completed. In view of the showing of record that prospective savings are not related entirely to the proposed abandonments being permitted, the Commission should deny the motions of the interveners for dismissal of the proceedings.

If in the future, the abandonments recommended by the consultants are permitted and effectuated, the pattern of movement of traffic over the remaining lines of the merged company necessarily would change because of rerouting and differences in the handling of interchange traffic. Based upon comparisons of studies of the density of traffic during 1957, over the affected lines of Seaboard and Coast Line, and estimates of the density of future traffic flow over the retained lines, annual savings of $4,552,664, and a net cash expenditure of $1,783,086 would be involved. Computations in this regard take into consideration various factors in which changes in the existing facilities, and the present manner of operation would be accomplished.

Changes in routes and through train service. The merged company would establish through freight routes which take

best advantage of the shorter available lines and the most economical operations over the consolidated facilities of the applicants. Of the proposed new routes, one of the more important involves the movement of traffic between Richmond and Savannah over the line of Coast Line via Dillon, utilizing a shorter route over a double tracked line of not more than 0.5 percent ruling grade compared to grades up to 1.0 percent if Seaboard's line were used. Also, between these terminals an alternative major route would be used primarily in serving intermediate points over Seaboard to Dillon, and Coast Line to Savannah. The route between Savannah and Jacksonville would be over Seaboard via Callahan, which is shorter than Coast Line's route between those points, thence over Coast Line. This would permit abandonment, north of Callahan, of Coast Line's cut-off line between Jesup and Folkston. South of Jacksonville, the routes proposed would be over Seaboard via Wildwood to Miami, with diverging routes south of Wildwood over Seaboard via St. Catherine to Owensboro and Coast Line to Tampa; and from St. Catherine over Coast Line to Brooksville, Seaboard to Drexel, and Coast Line to St. Petersburg. These routes would permit use of Wildwood as a concentration point and minimize use of Coast Line's line via Palatka, which is subject to speed restrictions because of congested areas and drawbridges.

Attached hereto as appendix "J," is a list of the primary freight routes which the merged company would establish between the principal terminals presently served by Seaboard or Coast Line. In parallel columns are shown the mileages of the proposed new routes and the mileages between the same points over the present direct routes of the applicants.

[32]

If the proposed new routes had been used in 1957, the freight which the applicants together transported between the points involved would have generated 1,983,110,000 fewer

gross-ton miles than the applicants actually operated. On the basis of system average train costs of $1.12 per 1,000 gross-ton miles, annual savings of out-of-pocket costs in the amount of $2,221,083 would have resulted from operating over the proposed shorter and more economical routes.

Many of the freight trains operated by Seaboard and Coast Line provide duplicative service between the same major terminals on practically the same schedules, and often operate with less than full tonnage. The merged company would be able to handle the combined traffic on the same schedules by operating fewer trains with heavier loads. On the basis of actual counts of freight trains operated by each applicant during 1 test week each in November 1957, and February, May, and August 1958, the number of trains, tonnage handled, origin and destination of the tonnage involved, and the number of locomotive units were projected to determine estimated annual totals. The elimination of duplicate freight trains would save 556,374 train miles and 1,415,778 locomotive-unit miles. Applying crew wages of $1.022 per mile for operation of 3-unit diesels hauling less than 80 freight cars, and $1.055 per mile for 5-unit diesels with 150 cars per train, the total savings is estimated to be $564,434. Additional related savings pertaining to reduced costs for repairs of locomotives; locomotive fuel, lube oil, and other supplies; enginehouse materials; train supplies; vacations and paid holidays, and payroll taxes on the wages involved, brings the estimated annual savings from elimination of duplicate freight train services to $1,271,672, based upon the 1957-58 freight train experience.

Seaboard and Coast Line operate numerous passenger trains on daily schedules competitive with each other in transporting tourists from eastern cities including New York, Philadelphia, and Washington to points in Florida and return. Both operate over their own tracks to the major points on the west coast of Florida, and Seaboard also operates on its tracks to

points on the east coast from West Palm Beach to Miami, and in some instances, splits trains at Wildwood for movement to Miami and to the Tampa-St. Petersburg area. Coast Line provides passenger service to the West Palm Beach-Miami area via Jacksonville, with through connections on the East Coast railway. Coast Line's so-called "Havannah Special" splits at Jacksonville with some cars being delivered to the East Coast for movement to Miami and intermediate points, and the remainder to Tampa via Sanford. Its "West Coast Champion" splits at Jacksonville with one section operating to Tampa via Orlando, and the other operating via Gainesville. It also operates trains via Gainesville, Ocala, and Clearwater to St. Petersburg.

Studies of the passenger train service of both applicants between Richmond and points in Florida, determined

[33]

the number of passengers moving on each train, the points of origin and destination stations for each, and the total revenues received by each applicant. Thereupon, schedules and train consists were developed to determine how the combined available traffic could be handled by the merged company with the same or improved operating schedules. Coast Line's present "Florida Special" Train would be operated south of Jacksonville over Seaboard's present tracks rather than over East Coast's facilities as presently operated. This is suggested as a means of relieving East Coast from the net operating losses consistently incurred by operation of that train, but, if East Coast prefers, the operation of this train would continue without change. Under the proposed schedules the merged company would operate 962,468 fewer passenger-train miles than Seaboard and Coast Line presently operate, and would save 1,614,247 diesel-unit miles, and 4,209,392 passenger-car miles.

The proposed new passenger schedules of the merged company would produce financial results as follows: Loss of $73,004 revenues related to local traffic in Florida on the trains under consideration and the loss of passengers on those trains to and from points beyond the lines of the merged company; loss of mail revenue $588,479 because of elimination of duplicative trains between Richmond and Hamlet and between Jacksonville and St. Petersburg; and loss of express revenue $47,184 on traffic between Richmond and Atlanta. Dining car revenues would increase $53,457 upon operation of the "Florida Special" over lines of the merged company instead of over lines of East Coast south of Jacksonville. Estimated net savings in total costs of operating the proposed schedules involve crew wages and locomotive repairs and supplies $662,286; and passenger car repairs, train supplies and expenses, dining car costs, and equipment rents and other items $1,920,778. Other expenses, including joint facility rents $118,484, payroll tax reduction $79,380 and several minor items would increase $42,066. The estimated net annual savings due to elimination of duplicative passenger train service would total $1,223,502.

Prospective diversion of traffic. Extensive analyses by electronic computors were made of data drawn form waybills covering every interline carload of freight which moved over the lines of each applicant, including their separately operated subsidiaries, during 4 months of 1957. The totals were expanded to reflect operations for the entire year, and data covering every carload which moved locally (not interline traffic) over the lines of either applicant during 1957, were included in the studies. Based upon such studies, it is anticipated that the merged company would be in position to attract and successfully handle more freight traffic than the total of that which Seaboard and Coast Line heretofore enjoyed. The studies

in question embraced constructive and actual freight traffic data, as follow:

Totals – 1957	Seaboard Coast Line (including subsidiaries)	
Number of carloads	1,064,150	1,094,164
Weight (1,000 pounds)	94,705,697	91,276,776
Freight revenues	$138,928,564	$139,673,614

The foregoing analysis, and related computations led to decisions that the principal changes in the traffic pattern attributable to the longer hauls available to the merged company would involve shifts in Seaboard's operations whereby interchanges presently made at Columbus would be made at Birmingham; those at Macon would be at Atlanta; those at Vidalia changed to Spartanburg; and those at Savannah would be made at Atlanta. Coast Line's operations and principal rerouting would involve shifting the present interchange of traffic from Augusta to Atlanta or to Birmingham; from Spartanburg to Bostic; and from Jacksonville to Miami. On these premises, the estimated diversion of additional freight traffic to the lines of the merged company would result in revenue losses to other railroads in the amounts shown in the tabulation below. Also shown are the total carload revenues which accrued to each of the carriers named during 1957, and the percent equivalent of the estimated losses in relation to the total freight revenue.

Affected Railroad	Carload Freight Revenue – 1957	Estimated Annual Revenue Losses	Percent Loss Revenue
Central of Georgia	$ 40,593,994	$2,308,081	5.69
Georgia (1)	7,067,797	1,400,116	19.81
Southern	227,169,271	469,956	0.21
Georgia & Florida	3,498,110	369,549	10.56
Columbia, Newberry & Laurens (2)	988,461*	338,415	34.24

Florida East Coast	30,226,222	312,395	1.03
Norfolk Southern	10,316,723	274,144	2.66
Louisv & Nashv (3)	200,241,358	200,829	0.10
Norfolk & Western	236,130,476	159,034	0.07
Peidmont & Northern	5,949,689	143,584	2.41
Georgia, Sou & Fla.	8,544,411	138,418	1.62
Savannah & Atlanta	3,948,004	118,081	2.99
Gulf, Mobile & Ohio	81,708,769	99,341	0.12
Virginian	62,086,276	93,496	0.15
Western of Alabama	3,309,702	47,865	1.45
Atlantic & Danville	1,617,810°	47,576	2.94
All others	—	88,091	—
Total Freight Revenue Diversion		$6,608,971	

(°) Total freight revenue.
(1) Operated under lease by Coast Line and Louisville & Nashville.
(2) Coast Line owns majority of capital stock.
(3) Coast Line owns about 33.7% of capital stock.

[35]

The potential diversion of carload freight traffic which the merged company would enjoy would result in the addition of 1,357,370,000 gross ton-miles and 5,098,392 private line car-miles. Applying average out-of-pocket costs of handling the added volume of traffic at the rate of $1.36 per thousand gross ton-miles, and $0.04 per private line car-mile, the estimated additional freight revenues would be offset $2,049,959. Thus, the potential total additional net income of the merged company before Federal income taxes would be $4,559,012 annually. These conclusions regard only potential changes in the handling of interline traffic heretofore participated in by Seaboard or Coast Line, and does not evaluate the possibility of attracting traffic presently not handled by the applicants.

The waybill studies further indicate the extent to which the merged company's revenues on certain traffic would be susceptible to decreases in relation to the combined revenues of Seaboard and Coast Line on the same type of traffic each year.

Because lower freight revenues accrue on bulk commodities such as sand, gravel, and pulpwood, which move via single-line routes, than are applicable if the same traffic moves over lines of more than one railroad, the merged company would lose a proportion of the revenues now accruing to the applicants. Likewise, as to bulk commodities which move under mileage rates, use of the proposed shorter routes of the merged company would result in the loss of some of the present revenues of Seaboard and Coast Line. The consultants estimate that $708,623 annual revenue related to the foregoing classes of traffic presently handled by the applicants would not flow to the merged company. Other revenue losses would occur because less traffic physically moving over the merged company's lines due to the retaliatory adverse routing by connecting and competing railroads, discussed in detail hereinafter. Within such categories would be fresh fruit and vegetables which originate at points in Florida, and other available traffic heretofore routed over the lines of Seaboard and Coast Line as overhead carriers. The estimates show that the merged company's annual losses in this regard would total about $963,198.

As shown, the predicted changes in routing by other railroads and by shippers friendly to them, and the physical loss of traffic to the merged company would cause a reduction of 254,280,000 gross ton-miles and 2,395,638 private line car-miles. Applying system average out-of-pocket costs determined to be $2.52 per 1,000 gross ton-miles, and private line car hire at $0.04 per car-mile, savings in operating expenses would inure in the amount of $736,612 annually. Thus, the net losses due to adverse routing would be $226,586 annually, which together with the effect of lower applicable single-line and other rates would reduce the merged company's prospective net income before Federal income taxes $935,209 annually, based upon the constructive 1957 volume of traffic handled by Seaboard and Coast Line.

The foregoing estimates as to particular traffic that would be subject to divergence to the merged company were made in light of the anticipated full changeover in physical plant and traffic development that would take place up to about 5 years after consummation of the merger; that every existing route with other railroads would remain open; that no railroad's lines, other than those comprising the proposed system of the merged company would receive preference in the routing of traffic; that any proposed diversion would be over new routes expected to be superior to existing comparable routes; that service over the merged company's route in question would be equal or superior to service over the existing routes; and that no substantially circuitous routes would be adopted merely as a means of securing a longer haul for the merged company. The merged company would honor the existing routing policies of Seaboard and Coast Line pertaining to traffic handled over their respective lines, and, where short-hauling has been practiced by the applicants in deference to routes over lines of weak connecting carriers, such policies would continue to be followed. If the aforesaid policies of restricting the efforts of the merged company are disregarded, and all-out diversion is attempted, estimates are that the potential volume of traffic susceptible to routing for longer hauls by the merged company would involve 206,990 carloads of freight consisting of 7,409,298 tons, with total potential revenues to the merged company of $14,245,329 annually.

Consintent with the avowed intention not to alter drastically the situation as to capturing traffic not presently handled by Seaboard and/or Coast Line, the applicants express willingness to have the operations of the merged company restricted under conditions made part of the authorization, which would require the merged company to maintain and continue in effect the present participation which Seaboard and Coast Line presently afford in existing routes and channels of trade via the ex-

isting junctions and gateways. The applicants submit that such conditions would protect each connecting and competing railroad and permit them to retain the traffic they now handle in conjunction with railroads other than the applicants, and to some extent would enable those railroads to divert traffic from the merged company on the basis of effective solicitation. Specific conditions, representing adaptations of those imposed by the Commission in *Erie R. Co. Merger*, 312 I.C.C. 185 (229 *et seq.*) and cases cited therein, are agreed to for imposition by the Commission upon any approval of the proposed merger herein.

[37]

General economic considerations. The applicants' pervading attitude is that the proposed merged company would be in position to improve transportation service to the public, and simultaneously to benefit from substantial economies in operating costs. Seaboard and Coast Line contemplate that the consolidation of the properties under single ownership and management would provide more efficient utilization of motive power and operating equipment and permit elimination of duplicate facilities presently maintained by Seaboard and Coast Line and their subsidiaries. Foreseen, are substantial reductions in direct costs of attracting traffic and in general expenses now incurred. Also, the merged company would better be able to control operating costs and increase the railroad's ability to compete with existing highway, airway, and waterway transportation services.

In support thereof, the applicants present statistical evidence which indicates a steady deterioration of the position of the railroad industry generally, and an accompanying rise in the ability of competing modes of transportation to divert freight and passenger traffic away from the railroads. Among other things, the data shows that in past years the railroads had

a virtual monopoly on intercity freight traffic, but, railroad participation had slipped to about 67 percent in 1946 and declined to 46 percent in 1958; and that assigning 1947 revenue totals as an index of 100, in 1958 the national income had risen to almost 200, water carrier revenues rose to about 175, pipe line revenues to about 225, motor carriers' about 280, and air carriers' to almost 450, while during the same period the revenues of railroads had remained almost static and in 1958 was only slightly higher than in 1947. Based upon averages for 1947-49 as the index of 100, wage rates of all railway employees had risen to approximately 200 in 1959; charge-out prices on railway material and fuel utilized had risen to practically 150, and railroad net revenues per ton-mile (Class I railroads) was somewhat below 120 in 1959. Also, railroad employers contributed for each employee about $504 per year to railroad retirement and unemployment funds compared to the contribution to social security and state unemployment taxes of about $197 per year for each employee covered in nonrailroad industry employment.

Considering particularly the southeast area which they serve, the applicants point out that between 1948 and 1959, practically every measure of economic growth has increased. Expressed in comparison to 1948 data, are shown the following factors of relative growth of the area generally: Combined estimated population 28 percent; retail sales 102 percent; production of electric power 181 percent; construction contracts awarded 297 percent; motor vehicle registrations (including trucks) 114 percent; and telephone installations 158 percent. In contrast, within the same geographic area, growth pertaining to railroad statistics

[38]

are shown as follows: Net railway operating income, (which fluctuated widely during the period) 66 percent over the 1948 total in 1957, 48 percent in 1958,

and 56 percent in 1959; freight revenue 24 percent in 1959; passenger train revenue decreased 8 percent; revenue ton-miles 28 percent increase, and passenger miles 42 percent decrease. Truck registrations in the affected states in 1948 totaled 900,000 units, and in 1959 totaled approximately 1,490,000, or, an increase of about 66 percent. The truck registration growth in the individual states ranged from 45 percent growth in Virginia to 92 percent in Florida during the years studied.

Other studies pertain to the declining position of the railroads in the southeast in regard to their relative participation in transportation of the total freight available. Specifically designed road and terminal checks were made of highway traffic at 21 of the largest points served by the applicants (excluding Richmond and Miami, the northernmost and the southernmost points), and analyses were made of available statistics dealing with other carrier forms, published under governmental and private auspices. In addition to estimates of the impact of motor carrier competition, studies pertain to the relative growth of transportation services provided by coastwide water carriers between northeastern ports and points and those in Florida and along the Gulf of Mexico; barge line operations in the movement of superphosphates from points in Florida via the inland waterways, coastal waterways, and sea routes; substantial movements by barge of other bulk commodities, including petroleum products, to, from, and between the areas in question; methods of transporting loaded railway cars partly by rail and partly by water by use of specialized types of vessels; and the more recent related development of combined truck and water transportation by the use of containers. Similar indications are apparent in relation to competition provided by natural gas and oil pipe line facilities operating within the affected area.

The loss of passenger business, which has declined steadily for many years, also has had an important effect upon the

traffic and revenues of both applicants since 1948. Passenger traffic showed declines over the preceding year in each year except during the 1951-53 period. In 1959, the combined total passenger-miles was below 1 billion, representing a reduction of 42 percent from the 1948 total, and in the same period, Pullman passenger-miles decreased 51 percent, and coach passenger-miles decreased 38 percent. Analysis of the passenger traffic data shows that the number of passengers carried in 1959 was 60 percent less than in 1948. Also indicated, is that the short-haul business has been diverted primarily to private automobile transportation rather than to other forms of for-hire carriers of passengers. Common carrier bus companies in the area served by the applicants also suffered loss of short-haul passengers business

[39]

in the years studied. A considerable number of long-haul railroad passengers between the important points on the applicants' lines and the major cities in the east, served in through passenger-train service with connecting railroads, have been lost to competing airline carriers.

The applicants present considerable data comparing the subsidies extended by Federal and local governments directly and indirectly to several of the forms of transportation media which actively compete with railroads in serving the public. Vast sums of public funds have been expended for the construction of highways, improvement of waterways and their use including channels for transportation purposes, and the construction of airports, each of which tend to remove burdens from common carriers operating over and at such public facilities. Illustrative of the extent and importance of governmental aid to carriers other than railroads are shown cumulative totals of governmental expenditures in three forms of indirect subsidies to common carriers as follows:

Form of Subsidy	1955	1957	1959
	(In Millions of Dollars)		
Construction of public highways Federal funds	779	1,426	2,985
Federal, state, and local funds	7,356	9,130	11,060
Airways and grants-in-aid for airports	118.8	238.4	394.
Improvements of waterways for all purposes – Federal funds	110.5	191.2	239.7

In addition to the general topics embraced in the applicant's evidence reviewed hereinabove, are the results of studies and other material produced as direct testimony and under cross examination, related specifically to considerations involved in fixing the final ratio of stock exchange, and estimates of the effect of the proposed merger and related transactions upon railroad employees. Interverners representing minority stockholders, and witnesses on behalf of organizations of employees of the applicants and other railroads, presented evidence to disprove the position of the applicants. Under appropriate headings and subheadings hereinafter discussions of these topics and the issues related thereto, follow the portion of this report pertaining to the evidence and position of railroad interveners.

[40]

SHIPPER AND PUBLIC EVIDENCE IN SUPPORT

Public relations efforts. Since prior to the filing of the application herein extensive public relations programs were organized by the applicants for purposes of broadcasting as widely as possible the expected advantages of the proposed

merger. The executives, department heads and other officials, counsel, and traffic and sales representatives of Seaboard and Coast Line, and others were assigned to respond to invitations to address meetings of municipal and other governmental officials, trade associations, industry promotion groups, and other persons in the affected areas. At several key points special dinner meetings of leading businessmen and public representatives were sponsored to further the applicants' points of view. Interested persons were solicited to support the application by offering testimony at the forthcoming hearings, and to forward letters and resolutions endorsing the objectives of the applicants.

At each point of hearing until the applicants completed the presentation of evidence in chief, numerous individuals appeared at the applicants' behest to testify in favor of the merger requests. Under rulings by the examiner, limiting the number of witnesses in order to avoid the taking of cumulative testimony, 29 persons representing public officials and civic organizations at various points served by the applicants, and 38 witnesses representing shippers and receivers of freight were called and heard. Numerous other persons present and desirous of testifying were refused the opportunity on ground that prior witnesses representing the same area or industry interests had presented evidence which the additionally proferred witnesses would duplicate except as to specific names, places, and tonnages. The resolutions and prepared statements which the persons who were not called to testify would have supported were excluded, but, they accompany the record as proffers of proof. The presentation of numerous witnesses making similar or identical assertions as to their needs for transportation service would unduly burden the record, and would serve no purpose not adequately observed in the recording of testimony of selected representative witnesses. The examiner's rulings should be affirmed.

Principal shipper evidence. Within the limitations imposed by the examiner, executives or traffic officials of eight manufacturers and distributors of paper products were permitted to testify in support of the applicant's proposals. Each asserted that the merged company would be able to improve the railroad service at paper plants within the areas served by the applicants. Several of the companies represented are among the largest producers of woodpulp, pulpboard, kraft board, wrapping paper, corrugated box materials, and other types of papers and

[41]

related products. Two of the companies[7] own railroad carriers which serve their plants, and several own or lease motor vehicle equipment operated in private carriage.

The paper companies own and operate numerous plants and facilities throughout the United States and in foreign countries. Various of their primary mills, converting and processing plants, and warehouses and distribution points are served directly by lines of either or both the applicants. Plants referred to which are reached by lines of Seaboard are located at or near Auburndale, Miami Plantation, Fernandina, and Fernandina Beach, Fla., Georgetown, S. C., and Roanoke Rapids, N. C., while plants at Palatka, Fla., Doctortown, Ga., and Richmond, Va., are reached by Coast Line, and a specialty paper plant at Hartsville, S. C., has direct service from Seaboard and Coast Line. Most of the aforesaid plants also are served by lines of other railroads including L-and-N and other interveners herein.

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[7]The International Paper Company owns the Atlanta & Saint Andrews Bay Railroad Company, having 81 miles of line between the owner's plant at Panama City, Fla., and Dothan, Ala., where it connects with a line of Coast Line. The St. Marys Kraft Corporation owns the St. Marys Railroad Company, operating 11 miles of line between St. Marys and Kingsland, Ga., where it connects with a line of Seaboard.

The paper companies which support the proposals herein foresee specific benefits as a direct consequence of the merger of the properties, operations, and services of the applicants. The expected savings most directly recognizable involves the hauling of pulpwood from the areas of production along the applicants' lines. Customarily, the applicable rates on pulpwood moving to paper plants by railroads which subsequently enjoy some part of the transportation of the products manufactured therefrom, are based upon the mileage operated over the lines of the railroads involved. The unit cost per mile is lowest where a single railroad system handles the entire movement, and increases as additional railroads participate in handling the shipments in joint-line movements.

In light of their requirements for transportation, the paper companies would be in position to utilize whatever new routes the merged company would establish over the combined lines of the applicants. This, they assert, would reduce the time elapsed in transit between the terminals of the merged company, and would permit the paper companies to reduce inventories of raw materials and finished products maintained at warehouses and distribution points throughout the country. The paper companies also anticipate that consolidation of the applicants' facilities would produce greater availability of wood-rack cars for pulpwood, special large open-top cars for wood chips, and clean highgrade boxcars of modern character for the movement of outbound paper and products. Several representatives expressed hopes that the increased efficiency of the merged company

[42]

ultimately would relieve shippers from recent repeated increases in railroad rates and influence publication of lower rates on the outbound traffic of paper companies.

In addition to the foregoing benefits, other advantages cited by the paper companies relate to the elimination of terminal switching now required to and from the plants of shippers located on lines other than those of the originating or delivering carrier, and related savings in switching charges; reduction in delays occasioned in the yards of the separate applicants in view of consolidation of existing yards; availability of more flexible combinations of routes and greater ability to alter routing for purposes of reconsignment and diversion of traffic; less cumbersome methods of tracing cars in transit; easier accounting for and balancing of charges for demurrage on cars of one applicant while on lines of the other; simplification of procedures to settle claims for damage to lading; and the opportunity to negotiate with only one company in respect of shipper proposals to establish new rates or modify existing published rates.

The proposed merger also is supported by producers of phosphate rock, a mineral used in the manufacture of fertilizers and various chemicals, which is mined principally in the western portion of Central Florida, generally known as the Pebble Rock District. The producers mine the rock which is refined, concentrated, and otherwise processed as superphosphates, triple superphosphates, deflourinated phosphates, and liquid phosphoric acid. Seaboard and Coast Line have the only lines of railroad serving the phosphate area, and participate extensively in the hauling of wet and dry rock from the mine fields to processing plants in the area. They also transport converted phosphate to consumer points which they serve; to points of interchange with connecting railroads for transhipment throughout the country; and to Tampa, Port Tampa, Boca Grande, and other Gulf of Mexico and Atlantic ports for movement by water carriers and barge lines to coastal and inland ports in the United States, and to foreign ports serving world markets.

The locations involving the mining and processing of phosphate in Florida, identified by the foregoing producers, are Bartow (Armour), from where more than 1,000,000 tons of phosphates are shipped annually, of which approximately 200,000 tons move to the producers' own fertilizer mixing plants in the southeast; Tenoroc, from where approximately 520,00 gross tons are mined annually; Coronet, at which point approximately 122,000 net tons per year are received for processing, and about 85,000 tons are shipped out; and Brewster, from where during 1960, more than 1,500,000 tons of phosphate rock, 200,000 tons of triple superphosphate,

[43]

and about 30,000 tons of liquid phosphoric acid were produced and shipped. The port facilities at Tampa, from where during 1959, an exporting company alone shipped more than 1,500,000 tons of phosphate and triple superphosphate mined and produced in Florida, also were mentioned by supporting witnesses as being dependent upon reliable railroad service. Other points on the applicants' lines at which the same companies have plants manufacturing various products and utilize railroad services to transport phosphate rock and its products, as well as numerous other products, chemicals, and foods, include Davenport, Fla., Jacksonville, Wilmington (Navassa), Columbus, Orlando, Norfolk, and Savannah. At each of these points, Seaboard or Coast Line, or both, provide railroad service into and out of the plants.

The beneficial effects which the phosphate interests foresee as a result of the proposed merger include most of those asserted by the paper companies. Specific advantages anticipated relate to improved distribution of the applicant's combined pool of special phosphate equipment which would better assure adequate supply of cars by the merged company where and when required by the shippers; broader advantages of "transit"

privileges which restrict the outbound movement of processed phosphates by either railroad in proportion to the quantity of raw materials delivered at the plant in question; consolidation of services by one carrier at mines and plants presently served by both applicants over separate tracks and use of duplicative facilities; greater choice for the movement of traffic over consolidated routes not presently available without interchange; and increased benefits of services by railroad field representatives in suggesting preferable routes, applicable rates, and improved methods of handling and transporting the phosphate products. The exporting company, in face of growing foreign competition, expects appreciable benefits if improved efficiency of operations permit the merged company to expedite the delivery and interchange of lading at ports of embarkation. Should lower rates result from the improved position of the merged company, the exporter would be able to close contracts of sale at foreign points which presently are lost because of slight differences in favor of foreign suppliers.

Representing citrus fruit producing areas of central Florida, several large independently owned, and a major cooperative organization of growers, processors, and distributors of citrus fruits and products testified in support of the proposed merger. The cooperative is a federation of nine member associations having an aggregate of about 1,100 grower members. Each company ships substantial tonnages of fresh fruits, canned citrus products, and frozen juices and concentrates, and uses railroads, motor carriers, and water carriers to supply their transportation needs, often according to the request of the purchaser.

[44]

Generally, the destinations are markets located throughout the United States and in Canada, with a preponderance of the traffic moving to the large urban areas of the East. The canning and processing plants are located at

Bartow, Frostproof, Avon Park, Lake Wales, and Dade City. Several of the plants are situated upon property leased from one of the applicants.

The plants are served either by Seaboard or Coast Line only, or by both, and railroad service is considered indispensible to the continued operation of the plants, although the ratio of fresh and processed citrus products moving by railroad is equal to about 15 percent of the total fresh fruit shipped, 65 percent of the canned goods, and 40 percent of the concentrates shipped to market. Of the total tonnage originated by these shippers, the ratio of the amount moving by railroad ranges between 49 percent and 65 percent.

In addition to all-rail and all-motor carrier service, several of the companies make substantial use of various types of water carrier service, including trailer-type containers which are trucked to Jacksonville or Miami terminals, thence placed upon vessels operating in so-called "sea-land" service to New Jersey ports, beyond which the containers are placed on truck tractors for delivery to the destination points. Since about 1948, the ratio of railroad transportation of Florida citrus production has dropped appreciably. Reasons ascribed for the change in the relationship of railroad to the other modes of transportation relate to the availability of lower costs for through transportation; greater flexibility in filling loads at points of origin and unloading at destination, and savings in the time elapsed from pick up of the traffic at origin point to delivery at destination. Among other reasons asserted, is that continuation of railroad service is necessary because often there is a shortage of highway and other transportation equipment to handle fresh fruits during seasons when other crops require expedited handling.

The benefits which the citrus shippers anticipate would flow from added efficiency in the operation of the merged company compared to the combined separate operations of the ap-

plicants. It is expected that the economies in the merged company's cost possibly would result in reductions in rates applicable on citrus fruits and products and make railroad service more competitive with motor-carrier service. Related to the potential reduction in rates, the citrus dealers also foresee improvements in matters of railroad car supply, settlement of claims, and ease of dealing with a single railroad in seeking adjustment of rates, information about cars in transit, and the providing of improvements in service.

[45]

For reasons which are practically identical to those of the companies and industries discussed hereinabove, individuals interested in the transportation of other types of commodities testified in support of the application. Among the major industries whose traffic the applicants regularly handle are several leading producers of numerous types of chemicals. These companies require reliable, economical, and flexible service by railroad, and seek to assure the ability of other railroads to compete with the merged company in the same manner they now compete with Seaboard and Coast Line. The chemical producing division of a major company which engages in the preservation of wood and the production of coke, plastics, and numerous chemicals also favors the proposed merger. Wherever circumstances warrant, it desires to encourage the merger of railroads having considerable mileage side by side, as a means of elimination of duplicative unneeded facilities, and to improve the general position of the railroads. The company leases its Jacksonville terminal from Coast Line, and many railroad companies, including both applicants and several interveners are substantial customers of the shipper.

Other shippers who support the proposals herein include several producers and distributors of concrete aggregates, sand, and road materials mined in Florida and sold throughout Florida and Georgia; a producer and selling agent of aggregates

mined in North Carolina near Fort Bragg, Durham, and Salisbury; a contractor operating gravel pits and asphalt plants near Montgomery, Ala.; a cement company which has mixing and manufacturing plants in various states including Florida; a cement company with operations at Ragland, Ala., on a line of Seaboard; an electric power company which operates steam electric generating plants serving areas in North Carolina and South Carolina; and retail coal dealers at Birmingham, and Troy, Ala. In summary, the witnesses foresee that efficiencies in the railroad operations which would result from the proposed merger would assure better transportation service, and give hope of lower rates in the future.

For substantially similar reasons, to the extent they apply to the business and transportation requirements of each, other witnesses supporting the application include the operator of a public warehouse located on a line of Seaboard at Orlando, the president of which recently was elected director of the Tavares & Gulf Railroad, a subsidiary of Seaboard; a public warehouse operator at Montgomery; a lumber manufacturer and dealer at Savannah with plants on property leased from Coast Line, which use trucks for the handling of practically all its inbound logs and for up to 40 percent of its outbound products; a lumber and building materials dealer at Montgomery on the line of the Central of Georgia Railway; a producer and shipper of potatoes and other vegetables at Meggett, S. C., who uses

[46]

railroad service to transport about 40 percent of his produce; a manufacturer of steel reinforcing bars and other products at Birmingham served by Seaboard and Southern Railway, which uses the latter for the movement of between 70 percent and 95 percent of its railroad traffic, and constantly seeks faster routes and service; and a soft drink bottling company with plants at Columbus, Ga., Auburndale, Fla., and other points, which pre-

fers to utilize railroad service, but, recently diverted substantial tonnages to motor carriers because of favorable rates. Also supporting the proposed merger is a freight traffic association which serves about 124 members having plants at major shipping points in North Carolina. The association anticipates that reduced costs would inure to its clients in light of elimination of delays due to interchange of cars and removal of switching charges, increased availability of single-line rates, and greater flexibility of routes without loss of presently available routes.

Community and civic support. Within the rulings of the examiner avoiding cumulative evidence, public witnesses other than direct users of the applicants' services, elaborated upon the circumstances and intentions of various political subdivisions and civic and trade promotion groups in the enactment of numerous resolutions and other instruments offered in support of the proposed merger. Interests of their respective areas were represented by spokesmen for town councils or city councils of Petersburg, Norfolk, Portsmouth, and Jarrett, Va., Maxton, N. C., and Orlando, Fla.; city commissioners, city attorneys, or city managers of Hopewell, Va., Athens and Elberton, Ga., and Center and Brundidge, Ala., mayors of Goldsboro, Fairmont, Bethel, and Garland, N. C., and Ashford, Headland, and Piedmont, Ala.; chambers of commerce, retail merchants' associations and several industrial development and trade association groups of Wayne County, Petersburg, Hopewell, Norfolk, Portsmouth, and Tidewater, Va., Goldsboro and Maxton, N. C., Piedmont, Ala., and Orlando and Jacksonville Beach, Fla.; and the Lions Club of Jacksonville, Fla. In addition to the aforesaid witnesses who testified, the applicants listed 107 persons representing other official bodies and trade groups at points in Virginia, North Carolina, and South Carolina, and about 60 persons representing groups within communities in Florida, Alabama, and Georgia, each of whom had ex-

pressed willingness to appear and testify. Counsel for all parties stipulated that the statements of such witnesses, if called and sworn, would be substantially identical to the testimony of witnesses representing similar groups who already had testified.

In most cases, the benefits expected by the communities were not clearly defined on the record herein and appeared to be nebulous. At points served by lines of one of the applicants and not by the other, the supporters of the merger are of the belief that the merged company's service would be

[47]

expanded by adding the complete service of the other applicant to the railroad service already available. Also, that operation of the merged company would eliminate delays and costs entailed in the interchanging of traffic between, and the switching of cars to and from the lines of the applicants under separate operation. Generally, the resolutions were enacted without consideration of the effect upon the communities involved in the event that certain portions of the lines of the merged company would be abandoned when applied for and permitted by the Commission. The local governing officials and the members of the various organizations had not been advised by any other railroad or transportation agency that the proposed merger also might divert traffic and revenues from other railroads and thus alter their present ability to compete for traffic available to the merged company. In practically no instance were opinions expressed in opposition to the endorsing resolutions prior to the recording of the votes thereon.

RAILROAD INTERVENERS

Florida East Coast Railway Company (East Coast) and affected interveners. East Coast[8] intervened[9] in opposition herein on grounds that the merger of Seaboard and Coast Line as proposed would result in substantial losses in the freight and passenger traffic and revenues of East Coast, and place it at a competitive disadvantage which would seriously interfere with East Coast's future

[48]

ability to serve the public adequately and efficiently. In the event the merger and related transactions are authorized, East Coast suggests that its interests would be reasonably protected by imposition by the Commission of conditions made part of its approval, as follows:

A. That Seaboard transfer to East Coast the Seaboard line of railroad between Marcy and Homestead, Fla.

B. That Seaboard be required to abandon its line of railroad between Okeechobee and Marcy, Fla.

C. That the applicants be required to:

(a) Preserve the existing channels of trade and commerce between their lines and the lines of East Coast;

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[8]Pursuant to **Florida East Coast Ry. Co. Reorganization** 307 I.C.C. 5, (prior reports cited therein), decided November 3, 1958, consummated January 1, 1961, East Coast emerged from equity receivership and reorganization proceedings initially commenced in 1931, in the United States District Court, Southern District of Florida. The Commission approved, (1) plan of internal reorganization, (2) (subject to conditions) acquisition of control of East Coast by the St. Joe Paper Company and the testimentary trustees of the Alfred I. duPont estate, and (3) dismissed without prejudice, the application of Atlantic Coast Line Railroad Company and others to purchase, acquire control of, and operate the reorganized company.

[9]Petitions to intervene initially were filed by individuals on behalf of the trustees and reorganization managers of the debtor company, pursuant to orders of the District Court having jurisdiction, and subsequently were filed by the reorganized East Coast corporation.

(b) Maintain existing gateways for the interchange of traffic between applicants and East Coast;

(c) Preserve and maintain service and routing for movement of traffic to and from applicants and East Coast without preference or discrimination in service, rates, divisions, or solicitation; and

(d) Maintain existing schedules for both receipt of freight from and delivery of freight to East Coast.

D. Such conditions as are necessary to protect the interests of others than applicants in the operation, and retirement of indebtedness, of Jacksonville Terminal Company.

E. That the applicants transfer to East Coast one of the two lines of railroad now owned and operated by them from Jacksonville to Tampa, and south.

F. Such further conditions as the commission may find necessary for the protection of the State of Florida, East Coast, the shipping public which it serves, and the public interest and national defense.

East Coast operates 572 miles of railroad including 425 miles of main line, all within Florida. Its main line extends from Jacksonville southwardly along the Atlantic coast via St. Augustine and West Palm Beach to Miami, about 366 miles, and a branch extends about 30 miles farther to Homestead and Florida City. A side line diverges from the

[49]

main line at St. Augustine to East Palatka, about 24 miles, and rejoins the main line at Bunnell, about 50 miles south of St. Augustine. Principal branch lines extend from Titusville to Benson Junction, about 40 miles, where it connects with Coast Line; and from Fort Pierce via Marcy, where it connects with Seaboard, to

Lake Harbor, about 72 miles, where it connects with Coast Line. East Coast's principal railroad connections are at Jacksonville where its originating and terminating traffic is interchanged with Seaboard, Coast Line, and Southern Railway, for movement to and from points north and west of Florida. At and south of West Palm Beach, 299 miles from Jacksonville, East Coast has 41 stations, 18 of which are served only by itself; 12 also are served by Seaboard with no existing facilities for interchanging traffic; and 11 stations, including West Palm Beach, Port Everglades Junction, Miami, and 8 others within the Miami switching district are served by East Coast and Seaboard, and physical interchange is effected by direct connection or through reciprocal switching arrangements.

The line of East Coast provides the only railroad service along the coast between Jacksonville and West Palm Beach. Stations of East Coast at Titusville, Cocoa-Rockledge, and Melbourne, (between 154 and 194 miles south of Jacksonville) are the nearest railheads to the Cape Canaveral missile testing center and nearby Patrick Air Force Base, important defense installations. South of West Palm Beach to Homestead, the line is situated east of and parallel with the line of Seaboard. Within the 67 miles between these points, the distance between the lines exceeds 2 miles only within the switching limits of Miami, where the greatest distance (Little River to Hialeah) is 4.3 miles. The route between Jacksonville and Miami is approximately 40 miles shorter over East Coast's line than over the line of Seaboard. Between South Miami and Homestead, the East Coast line is parallel with Seaboard's line at distances not exceeding 3.7 miles, and the terminals at Homestead are about 0.5 miles from each other.

East Coast's outbound traffic consists primarily of vegetables, fresh fruits, and citrus products from agricultural areas adjacent to practically every portion of its lines. Vegetables originate from not less than 25 points at distances ranging from

37 to 376 miles from Jacksonville, and citrus fruits move from 12 origin points from 117 to 322 miles from Jacksonville. This traffic moves in refrigerator cars during certain seasons and requires special handling and expedited movement. Perishable commodities represent approximately 85 percent of East Coast's interline forwarded traffic, and the remainder comprises low revenue producing traffic as sugar cane, stumps, pulpwood and ores.

[50]

Approximately 50 percent of the inbound traffic consists of high revenue manufactures and miscellaneous articles moving in conventional box cars and other equipment, most of which is returned empty to the owning railroad. Based upon East Coast's annual financial reports to the Commission for each year ending 1955 through 1959, inclusive, its average operating results, are shown as follows:

Total operating revenues	$ 35,662,375
Total operating expenses	27,836,238
Railway tax accruals	2,480,782
Total gross income	3,027,845
Income available for fixed charges	2,871,615
Total fixed charges	2,687,159
Net income after fixed charges	$ 184,456

Attached hereto as appendix "K" is a compilation for each year 1957 through 1960, of the number of carloads of each major group of commodities transported by East Coast as the originating or terminating railroad, and the revenues produced by each class. In those years, the handling of fresh vegetables and fruit and citrus products provided between 14.4 percent and 18.1 percent of the revenue received on all carload traffic interchanged by East Coast, and the inbound manufactures and miscellaneous traffic revenue was equivalent to between 49.4 percent and 52.7 percent of the total traffic in question.

During the shipping season of 1958-59, fresh citrus fruits from the entire state of Florida, totaled 17,574 cars, of which East Coast handled 7,362 cars, or the equivalent of 42 percent, and vegetable shipments totaled 27,098 carloads of which East Coast handled 18,239 cars, or 67 percent. In 1959, the fruit and vegetable traffic originating on East Coast lines and moving to points in the Official Territory, predominantly via Virginia gateways, accounted for $3,583,955 of the total freight revenue of $24,969, 814. Included were 8,423 carloads of citrus fruit, 297 carloads of other fruits, 11,295 carloads of vegetables not otherwise specified, 2,421 cars of tomatoes, and 2,774 cars of potatoes. Of the aforesaid traffic, 10,104 cars or 40.1 percent were interchanged with Coast Lines, 7,161 cars or 28.4 percent with Seaboard, and 7,945 cars or 31.5 percent were interchanged with Southern Railway.

Studies were made of traffic records involving every carload received by East Coast from connecting carriers during January, April, July, and October 1959, and such were expanded to reflect the entire year's traffic. The carloads delivered by East Coast, the revenue's accrued thereon, and the percentage relationship of the participation of each connecting railroad, shown separately in regard to (1) all stations on East Coast, (2) stations within East Coast's "local area," between Jacksonville and West Palm Beach,

[51]

excluding West Palm Beach (north end), and (3) stations between West Palm Beach and Miami (south end), are as follows:

Connecting Railroad	Carloads	Percent	Revenue	Per cent
Seaboard				
(1) all FEC stations	32,076	31.2	$3,769,353	24.3
(2) FEC north end	19,529	40.1	1,487,430	33.2
(3) FEC south end	12,547	23.2	2,281,923	20.6

Coast Line				
(1) all FEC stations	48,552	47.3	7,208,708	46.4
(2) FEC north end	23,018	47.4	2,059,286	45.9
(3) FEC south end	25,534	47.2	5,149,422	46.6
Southern Railway				
(1) all FEC stations	22,036	21.5	4,554,959	29.3
(2) FEC north end	6,064	12.5	935,379	20.9
(3) FEC south end	15,972	29.6	3,619,580	32.8
Total all connections				
(1) all FEC stations	102,664	—	15,533,020	—
(2) FEC north end	48,611	47.3	4,482,095	28.9
(3) FEC south end	54,053	52.7	11,050,925	71.1

East Coast presently operates two daily freight trains in each direction, supplemented by extra sections during seasons when perishables move. Trains Nos. 97 and 343, which depart Jacksonville (Bowen Yard) at 12:01 p.m. and 3:00 p.m., respectively, carry southbound traffic from connections, and provide placement in Miami the same night and at other locations the following morning. Miami freight cars are classified on No. 97, which operates non-stop to Miami except for crew changes at two points, and No. 343 handles cars for New Smyrna Beach, (where cars for connection with Coast Line at Benson Junction are added) Fort Pierce, Port of Palm Beach, West Palm Beach, and Fort Lauderdale. Local freight trains operating with yard engines effect deliveries at set-off points and at intermediate points. East Coast officials fear that in the event the suggested protective conditions are not prescribed herein, the proposed consolidation of applicants' freight routes and schedules would cause diversion of traffic; would result in unavoidable consolidation of trains Nos. 97 and 343; and be responsible for delays up to 24 hours in completing deliveries at Miami. As foreseen by East Coast, the reduced traffic availability and change in train service inevitably would be followed by further deterioration in East Coast's service, and in greater losses of traffic and revenue.

Passenger trains operated by East Coast connect at Jacksonville, with Seaboard, Coast Line, and Southern. Its through passenger trains from and to points in the East and the West are handled in conjunction with Coast Line, largely in direct competition with Seaboard. In 1960,

[52]

passenger traffic revenues contributed $4,654,992, or 15.4 percent of East Coast's total railway operating revenue of $30,277,877. While some of the passenger trains operate at losses, the principal first class through trains between Miami and New York City are profitable. These include the "East Coast Champion" (trains Nos. 1 and 2), and the "Florida Special" (trains Nos. 87 and 88), which Coast Line operates between Washington and Jacksonville. Because the points between West Palm Beach and Miami are extensively developed as year-round vacation resort areas, tourists' travel accounts for a preponderance of the passengers using the through trains. The East Coast Champion has comparable departure and arrival schedules, and otherwise is directly competitive with Seaboard's "Silver Meteor" north of Jacksonville and south of West Palm Beach. Studies show that more than $3,600,000 of the total passenger service revenues of East Coast accrued from interline passengers to and from points between West Palm Beach and Miami, both inclusive. Without the benefit of the through passengers, East Coast believes it would be unable to operate its present trains between Jacksonville and West Palm Beach.

East Coast's accounting, operations, and freight and passenger traffic officers recomputed the expected annual loss in East Coast's revenue as a consequence of the proposed merger of Seaboard and Coast Line, which the applicants estimate would be $312,395, and conclude that such amount is considerably understated. Rather, they contend that the loss would include $548,183 earnings on traffic originated by Coast Line and in-

terchanged with East Coast for delivery at and south of West Palm Beach, and $1,862,607 representing the total interchange traffic for such destinations on traffic received from Coast Line, Seaboard, and their various subsidiary and solely or jointly leased companies. Further, East Coast submits that of its entire annual revenues, amounting to $11,050,925 (based upon the 1960 projected totals,), the equivalent of 67.2 percent (ratio of Seaboard and Coast Line interchange traffic to the total interchange traffic in question) of 71.1 percent (ratio of such interchange revenue to total southbound revenues in 1960) or $5,280,044, representing the total revenues of traffic terminated at and south of West Palm Beach, would be jeopardized by being rerouted for delivery over Seaboard's line south of West Palm Beach. East Coast considers that such an eventuality could occur before the end of the fifth year following consummation of the proposed merger.

Compared to the $184,456 representing the adjusted 1955-59 East Coast average annual net income after fixed charges, described hereinabove, East Coast estimates that had the effects of competing with the merged company prevailed during the 1955-59 period, the similarly adjusted net income

[53]

after fixed charges would have been as follows: (1) Deficit of $446,-187, computed on the applicants' estimate of diverted traffic causing revenue loss of 1.03 percent of the total revenues, plus loss of passenger traffic revenues of $2,510,490, and $247,747 incidental revenues received on passenger trains Nos. 1 and 2, and 87 and 88, after appropriate adjustments of average freight operating expenses, out-of-pocket costs pertaining to passenger train service, payroll tax accruals, hire of equipment costs, and reduced joint facility rentals at the Jacksonville Terminal Company properties; (2) deficit of $917,427 based upon reduction in freight revenues of $1,957,567, or, 11.5 percent as computed

by East Coast; and (3) deficit of $1,932,923, giving effect to the ultimate injury to East Coast at the end of the 5-year period to perfect the merger of Seaboard and Coast Line, and the complete diversion of the $5,280,044, or, 32.7 percent of the revenues received on the present Seaboard and Coast Line southbound interchange traffic delivered by East Coast at and south of West Palm Beach.

Evidence pertaining to the prospective effect upon East Coast, and similarly, for each of the other railroad interveners, embraced many statements and opinions of experienced traffic officials relating to the power of railroads to dictate or control the routing of shipments moving over their lines. In essence, there is agreement that railroads actually designate the routing to be applied to freight movements in not more than about 5 percent of the carloads transported. However, it is clear that through their organizations of sales representatives and traffic solicitors, the railroads are able to, and do influence the shippers' decisions as to desirable routes available in terms of rates and charges applicable, and service and elapsed time in transit which would most conveniently satisfy the requirements of the shippers. Persons experienced in railroad sales and service activities and in traffic promotion agree that the greatest influence upon a shipper by railroad solicitors lies with the originating carrier; that the delivering carrier is in the second most effective position to attract new business and prevent loss of existing traffic, and that the least strength in these matters is in the position of the intermediate carriers which handle the cars and trains between the lines of the originating and terminating railroads. In the same order of descending potency, the railroads involved are able to exercise the customarily recognized right of retaining the traffic on its lines for the longest possible hauls consistent with instructions of the shippers and observance of the lowest applicable rates and overall transportation costs.

Heretofore, as connecting carriers serving areas as extensions of each other's lines, East Coast and Coast Line forces have cooperated closely and a competitive situation has not existed. East Coast's officers are

[54]

apprehensive about the increased competition it would suffer upon the merger herein being consummated, because it would be required to compete directly with the combined sales and solicitation strength of Seaboard and Coast Line. East Coast fears it would face new disadvantages within its own service territory, and, in addition would lose Coast Line's assistance within the areas served by the applicants and their family railroads, and at many major industrial and consumer centers throughout the United States and in foreign countries. Statistically, East Coast maintains 9 freight traffic offices, of which 5 are at points on its lines and the others at Atlanta, Chicago, Cincinnati, and New York City; Coast Line maintains such offices in 63 cities, Seaboard in 60. Together, the freight traffic officers of the applicants and affiliated carriers, including L-and-N, are located in 66 different cities including 21 in Florida. East Coast's freight offices on its lines employ a total of 17 persons, while at the same points Seaboard and Coast Line have 26 and 27 employees, respectively. East Coast also maintains passenger traffic offices at 4 points on its lines compared to a total of 71 such offices of the applicants and family lines, including 15 points in Florida and 56 at 32 other points.

Counsel of East Coast argues that harmful results, at least as great as those predicted in the calculations and conclusions hereinabove are inevitable, even in the event that the Commission should prescribe conditions requiring continuation of existing open routes and channels of trade suggested by the applicants. Nevertheless, East Coast asserts that the merger herein could be found consistent with the public interest if its ap-

proval is made subject to the additional protection encompassed in the conditions which preface the discussion of East Coast's position as intervener. Several of the suggested conditions cover, in specific terms, the same topics generally included in those which the Commission has found adequate and reasonable in deciding other merger proceedings. Others would require the merged company to transfer to East Coast certain trackage, and to abandon a connecting segment, which together would assure East Coast's exclusive operations on the east coast of Florida to and from West Palm Beach and points south. Such benefits, of course, are sought as a means of protecting East Coast from any adverse effecting arising from the merged company diverting any portion of the traffic now participated in by East Coast.

The affirmative evidence proffered by East Coast in support of the suggested conditions is limited to the proposal that Seaboard be required to transfer by sale to East Coast at a fair and reasonable price, the line of railroad extending from Marcy (about 48 miles northwest of West Palm Beach) via West Palm Beach and Miami to Homestead,

[55]

a total of approximtely 150 miles, and that the merged company be required to abandon its line extending from Marcy to the next station at Okeechobee, about 13.2 miles. If prescribed, East Coast anticipates that the service route between Jacksonville and points south would be about 40 miles shorter than Seaboard's present route; that south of West Palm Beach, operations would be over the trackage acquired from Seaboard, and industries and team tracks of East Coast would be served by local trains; that the movement of through trains within the downtown areas of West Palm Beach, Fort Lauderdale, Hollywood, Miami, and other points through which East Coast's line presently operate would be eliminated by routing over Seaboard's trackage; that such

would reduce by about 80 percent the present movement of trains through the business areas; that the present average of approximately 4,700 daily train movements over grade crossings between West Palm Beach and Miami over East Coast's line would be reduced to about 950 train movements per day; that many buildings, tracks, and other facilities of East Coast could be removed from downtown areas of the points it serves; and that if operations continue, an eventual decrease of about 730 employees would be required.

Generally, the foregoing allegations are not supported by specific details and descriptions of facilities where changes would be effected. This, East Coast explains, is because it was not accorded a sufficient period of time after its emergence as a reorganized corporation to permit its staff to complete studies and plans for the type of operations that would be feasible. Its conclusions are based primarily upon decisions that neither its own main line nor the trackage acquired from Seaboard would be abandoned as an entirety, but, that more than 100 miles of second main track would be subject to future abandonment. Further, East Coast expects to conduct freight, passenger, and express operations into, from, and within Miami on Seaboard's trackage, and to utilize the latter's freight yard and locomotive- and car-shop facilities at Hialeah, (west of the Miami business district) and its passenger terminal facilities within Miami. East Coast's present terminal and yard properties, to the extent they duplicate the foregoing facilities and would not be required for industrial switching purposes, would be removed from service. Freight service adequate to replace that presently provided by Seaboard, in addition to East Coast's own service would be operated in accordance with the demands of the traffic available.

[56]

Studies by East Coast's finance department, the results of which were presented in exhibit form, based upon Seaboard's

total system traffic and related operating revenues, expenses, and net income data reported to the Commission for the year ended December 31, 1959, reflect estimates (the details of which were explained for the first time in East Coast's brief) which indicate that the traffic originated and terminated by Seaboard at and south of West Palm Beach[10] resulted in net railway operating deficit of $1,128,551, computed as follows: Total railway operating revenue $16,215,703 ($10,121,465 freight, and $6,094,238 passenger service); total expenses $17,344,254 including adjusted average railway tax accruals and hire of equipment costs, and operating expenses based upon Seaboard's 1959 freight operating ratio of 82.96 percent and passenger operating ratio of 125 percent, both adjusted to give effect to special characteristics which allegly make the costs of handling traffic at and south of West Palm Beach considerably higher than Seaboard's system averages. Thus, 25 percent of the computed expenses of Seaboard is added as an arbitrary factor in view of the freight moving over Seaboard's line concerned herein being such that it requires terminal services in every instance; practically all the cars entail empty mileage in one direction; and the handling of fruits and vegetables is accompanied by high loss and damage claims, and requires special protective services and round-trip equipment rental charges. Other causative aspects cited relate to Seaboard's solicitation costs being high due to various competitive services being available, extra expenses of providing switching within the West Palm Beach territory, and division of the through rates to which Seaboard is entitled being based upon tariff routes 40 miles shorter than Seaboard's service routes. Likewise, a 25 percent factor is added to the computed passenger expenses to allow for the relative shortness of the movement on the line involved, and for the high percentage of Pullman-

[10]East Coast presents no data estimating the effect of operations including the Okeechobee-Marcy-West Palm Beach portion of Seaboard's line.

car and dining-car service provided on the through trains, and as incidental passenger-train and terminal service costs encountered are higher than Seaboard's system average costs.

In light of the foregoing computations, East Coast further estimates that had it operated Seaboard's Marcy-West Palm Beach-Miami-Homestead line to the exclusion of Seaboard in 1959, net railway operating income, excluding Federal income taxes, of $6,989,507 would have been realized, computed as follows: Combined total freight service revenue $35,605,663 and passenger service revenue $13,414,197, or $49,019,860 together, and combined operating expenses plus adjusted railway tax accruals and hire of equipment $42,030,353. In determining the estimated combined operating expenses,

[57]

$9,084,287

of Seaboard's $17,344,254 computed 1959 operating expenses are added to East Coast's actual 1959 expenses, on the theory that the latter's operating expenses would be increased by an amount equal to 50 percent of East Coast's 1959 freight operating ratio of 53.98 percent and of its passenger operating ratio of 123.15 percent, applied to Seaboard's computed expenses relating to traffic on the line at and south of West Palm Beach; that 50 percent of Seaboard's computed railway tax accruals would not be incurred by East Coast in its operations; that the added cost of hire of equipment would be 200 percent of the 1959 costs of Seaboard; and that East Coast's 1959 operating ratios would have remained unchanged even if the line in question had been operated by East Coast. As increased efficiencies are achieved and its operations are adjusted as a result of the proposed condition being complied with, East Coast anticipates that greater proportionate annual benefits would accrue in the future.

Of the remaining conditions requested, East Coast's proposal regarding future obligations of the applicants and other parties concerned with operation of the Jacksonville Terminal Company relate to the effect thereon if the proposed merger herein should be approved. Presumably, if the prevailing conditions are altered sufficiently to require modification of the contractural obligations of the parties in this regard, appropriate amendments to or supplements of the existing agreement would be negotiated. A condition as proposed in this regard would provide no protection beyond what the contractual rights of the parties might be, and would serve no purpose. East Coast made no attempt to offer evidence to justify the requested condition to require transfer to it of one of the lines of railroad operated separately by Seaboard and Coast Line between Jacksonville and Tampa and points south. On brief, East Coast points out that Southern Railway has requested an identical condition, and that East Coast intends to support its own request at future hearings, if any, ordered to determine which intervener should prevail. Therefore, consideration of that condition as to East Coast need not be accorded at this time.

In rebuttal and on limited brief, the applicants contend that East Coast's estimates of the traffic which the merged company potentially would divert are inflated, primarily because (1) in determining the proportion of interline traffic moving to West Palm Beach and points south, East Coast relates such traffic to all the interline freight moving southbound over its lines instead of limiting the comparison to so much of the interline traffic to West Palm

[58]

Beach and south that originates on lines operated directly by Seaboard and Coast Line and reaches East Coast's line at Jacksonville, the only point of connection where East Coast traffic would be diverted upon

the merged company's consolidation of existing facilities and service; (2) in assuming that the merged company would have the general power to designate the routing of a majority of the traffic originating on its lines and be able to exercise control of routing over lines of connecting carriers including the L-and-N and other independently managed and operated subsidiaries, the capital stock of which is owned in part or entirely by Seaboard or Coast Line. The applicants assert that the ratio of 71.1 percent does not properly represent the proportion of East Coast's interline traffic which would be in jeopardy of being diverted by the merged company, and (3) by including as divertible traffic that which is delivered by East Coast to stations and industries served by it exclusively, or, where Seaboard has no direct access or arrangements to provide service at assigned sidings or team tracks as convenient as those of East Coast.

Based upon the rebuttal presentation, of which only a few adjustments are discussed hereinabove, the applicants further argue that the acknowledged common practices in the business of railroad transportation preclude any possibility of the entire potential of divertable traffic ever being lost to East Coast due to operations of the merged company. For its own best interests, the merged company would depend upon being able to participate, along with Southern Railway, in the handling of as substantial a proportion as possible of the fruits, vegetables, and citrus products which originate on East Coast's lines and are interlined at Jacksonville for continued movements northbound. Thus, the applicants show that the merged company could not afford to disturb the interchange of any disproportionate fraction of the traffic connecting with East Coast for movement southbound to West Palm Beach and beyond, and continue to hope for a reasonable division of the traffic originating on East Coast's lines. In light of this situation, applicants contend that the merged company's ability to divert traf-

fic from East Coast would be further limited. For example, Seaboard's routes north of Jacksonville are directly competitive with those of Coast Line and with Southern, particularly in regards to traffic moving to destinations beyond the lines of each. As a practical means of persuading East Coast to influence the movements of freight it originates to move via Seaboard's lines north of Jacksonville, Seaboard has found it expedient to interchange an appreciable portion of its southbound freight via Jacksonville for movement over East Coast's route even though the route could be entirely over Seaboard's line.

[59]

During 1959, Seaboard provided about 30 percent of the combined traffic interchanged by Seaboard and Coast Line at Jacksonville for movement by East Coast to and south of West Palm Beach. As the competition by Southern Railway for participation in northbound traffic interlined at Jacksonville would continue after consummation of the proposed merger, the applicants conclude that the merged company would not be able to divert the Seaboard traffic presently interlined with East Coast. Thus, the potentially divertible traffic is reduced from $769,506 to $538 654.

Clearly, if provoked by any drastic loss in its interchange southbound traffic and revenues, East Coast could encourage the originating shippers to divert the routing of traffic over Southern Railway's routes and schedules which are competitive with those of the applicants and the merged company. In 1959, Southern received 31.5 percent of East Coast's northbound perishable traffic, and delivered to East Coast 29.3 percent of all the southbound traffic it interlined at Jacksonville. Traffic data for 1957 reveals that East Coast interlined 20,556 carloads of freight with Seaboard and Coast Line as participating overhead carriers. Adjusted to reflect a decline of 2.8 percent in the applicants' combined freight revenue in 1959 compared to 1957,

the revenue on the overhead interchange traffic totaled $2,553,-824. Should the merged company be indifferent to the interests of East Coast in future interlining of traffic to points served in direct competition with Seaboard, East Coast would be in position to convince its friendly shippers to route traffic via Jacksonville to points beyond the merged company's lines via Southern Railway and its connections.

The applicants assert that inclusion by East Coast of net losses due to what it refers to as prospective discontinuance of operation of New York-Miami through passenger trains over its lines in conjunction with Coast Line and other carriers, is not warranted. As previously related hereinabove, the applicants are agreeable to allow East Coast to decide whether it desires to continue operation of trains 87 and 88 (Florida special), which the applicants estimate are operated by East Coast at less than its avoidable costs in performing such service. Should East Coast decide that continued operation of that pair of trains would not be beneficial to itself, the merged company would assume its operation over the line of Seaboard. The other through passenger train mentioned by East Coast, Nos 1 and 2 (East Coast Champion), also operates in conjunction with Coast Line and connecting carriers. Under the applicants' proposals herein, operation of the East Coast Champion would be continued without change. Thus, rather than incur

[60]

any operating loss related to operation of that train, East Coast would continue to enjoy its proportionate share of the profits.

The applicants disagree with the estimates upon which East Coast relies in arriving at the conclusion that discontinuance of Seaboard's operations between West Palm Beach and Homestead would provide a means of eliminating deficits

incurred because of such operations. Rebuttal studies, based upon the 1957 waybill data previously considered as to freight traffic, and 1959 passenger revenues, adjusted to January 1, 1960 levels, representing Seaboard's avoidable costs which would have been saved had it not operated south and east of Okeechobee, are shown as follows: Revenues and rents pertaining to traffic and related operations $21,916,115; operating expenses $11,273,942, including among other items, $235,360 for employment costs relating to 21 ticket clerks, freight and passenger agents, and other office personnel whose services would not be required, and $413,367 for property taxes; and net operating income before Federal income taxes $10,642,173. If the proposed changeover should take place the merged company would realize $2,707,366 from the sale of freight and passenger train equipment and certain properties within Miami which no longer would be required for operation. Additionally, annual savings would accrue equivalent to the depreciation allowances on the retired property, plus interest at the rate of 5 percent on the cash recovered, which together would total $253, 792. Thus, the applicants estimate that the surrender of the line beyond Okeechobee would result in annual losses before income taxes in the amount of $10,388,381.

Sessions of the hearing were held at Miami especially to accommodate the convenience of East Coast company witnesses, and to hear shipper and civic witnesses in support of the position and proposals of East Coast. In addition to officers and employees, 18 persons testified on behalf of their individual interests, or, the position of organizations whose members use East Coast's service for inbound or outbound traffic. Also, 18 persons appeared for various county and local community governing bodies, chambers of commerce, and other associations. Resolutions enacted by 12 of the civic groups were offered and received in evidence after cross examination of the sponsoring witnesses. The resolutions express general opposi-

tion to the proposed merger upon the premise that East Coast would suffer traffic losses which would severely injure its financial position and hamper its ability to continue present operations, and as a result, the areas which are served solely by East Coast and industries which rely upon

[61]

its services would be in a worsened position as to available railroad service.

Many of the communities interested in the continuing welfare of East Coast are situated adjacent to ocean and bay beaches and lake recreational areas which are developed as tourist attractions and vacation centers. In that light, a unanimous concern of the civic interests is the prospect that available first-class and other types of railroad passenger service would be seriously impeded. The interests in that position admit that private automobiles and airplane passenger service provide service for a large proportion of the tourists to the detriment of railroad passenger service generally, but, they assert that every mode of transportation is necessary and that highways and airports merit public financial aid as beneficial growth factors. Nevertheless, the communities fear that the predicted adverse affect upon East Coast would be harmful to the general economy of the area by decreasing their availability to the total tourist trade. Responsible officials and trade groups representing St. Augustine where the general offices and headquarters of East Coast and its operations are located, St. Johns County of which St. Augustine is the county seat, Fort Pierce, and New Smyrna Beach expressed an additional basic objection to the proposed merger. Assuming that consummation of the merger would result in new adverse competition to East Coast and cause it to lose business and decrease its service and operations, these civic bodies fear that railroad employment in their communities would decrease and the total payrolls would suffer. Because the railroads comprise a major source of em-

ployment at these points, the civic and business leaders have recorded their concern that any adverse affect upon East Coast would bring serious dislocations and other economic hardships to the area.

The interests of individuals and concerns whose primary use of railroad service is for outbound movement of traffic in substantial volume, involve producers of fresh vegetables farmed on many thousands of acres in the area adjacent to and east of Lake Okeechobee near Belle Glade, between Fort Pierce and Lake Harbor, and in the South Bay area between the lake and West Palm Beach; and citrus fruit growers in the so-called "Indian River" area between Fort Pierce and points in the vicinity of Cape Canaveral and west of that area; and distributors of products of citrus fruits shipped from packing houses at Fort Pierce, Wabasso, Cocoa, Gifford, and Titusville, generally at shipping points served by private sidings on the lines of East Coast. The concerns represented are among the largest producers in Florida. The shippers utilize truck service for the movement of between 50 percent and 70 percent of their annual outbound shipments, mainly

[62]

because buyers demand expedited truck service and partial deliveries at points enroute, and because the applicable rates are more favorable than railroad charges. These shippers use railroad service chiefly to take advantage of better market prices which prevail at auction markets at the major eastern cities which require that the shipments arrive by railroad. Several expressed the opinion that the present tendency is to increase the use of motor vehicles and that if railroad rates were as low as truck rates additional traffic could be attracted for railroad shipment. They concede however, that the process of rediverting traffic to the railroads would be slow for the reason that non-regulated motor carriers probably would meet any

reduced rail rates. As part of their commercial pursuits the vegetable and fruit shippers receive numerous carloads of fertilizers, feeds, and crate materials, and desire to perpetuate East Coast's position as an efficient railroad carrier to provide their needs for such inbound transportation.

Various of the other interests opposed to the merger of Seaboard and Coast Line rely primarily upon East Coast for all or most of their railroad transportation service, and support the suggested conditions to favor East Coast. The gist of their feeling is that no possible future circumstance should be permitted to develop which would have the effect of forcing East Coast insolvency and to return to a state of bankruptcy and probable dissolution. Such attitudes obtain despite acknowledgement that certain offsetting advantages to some shippers would accrue from the elimination of interchange of cars between Seaboard and Coast Line, and any improvement in operations which the merger conceivably might accomplish.

The advocates of East Coast's requests for special protective conditions assert that the Commission should assure that East Coast would be able to share in the benefits of the merger. Several shippers favor East Coast's proposals as a means of preventing the merged company's monopoly of railroad business in the east coast area of Florida. On brief, counsel for East Coast underlines the foregoing bases for approving the proposed conditions and urges that every advantage to the public which favors the requests for merger of Seaboard and Coast Line, as cogently are applicable in support of the conditions which East Coast requests for its protection.

East Coast further petitions the Commission to give consideration to a motion to deny or dismiss the application which had been presented by counsel for East Coast on February 17, 1961, upon completion of the affirmative evidence presentation by and on behalf of the applicants. The motion

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leges that the evidentiary proof of record fails to establish that operations by the merged company would be consistent with the public interest in terms of service to the public and in regard to other specified particulars. The examiner advised on the record that the motion would be presented for the Commission's decision, and complying with related rulings the interveners proceeded with presentation of their affirmative evidence. Exceptions to the examiner's rulings are renewed on brief. The allegations cited as grounds in the foregoing motion were entirely repetitive of matters already presented by the East Coast representatives in petitions to the Commission filed December 9, 1960 and January 30, 1961. By order of division 4, dated January 16, 1961, affirmed by the Commission on April 24, 1961, the petitions to deny or dismiss the proceedings and for other procedural relief were denied. Based upon the evidence of record and briefs filed by the parties, the application may be determined upon the record at this time and no action is required on the motion.

Counsel for East Coast also presses exceptions to and requests reconsideration of rulings by the examiner upon objections to specified statements contained in rebuttal evidence presented by the president of Seaboard, and in the exclusion of two exhibits consisting of eight pages each reproduced from Seaboard's annual reports for the years 1959 and 1960 filed with the Florida Railroad and Public Utilities Commission. Other than to allege that the actions constitute error and are prejudicial to East Coast and therefore should be reversed, the brief does not argue or otherwise attempt to support the requests. The rebuttal statement excepted to is recitation of the president's appraisal of the attitude of East Coast in this proceeding and his conclusions thereon. While it presents a characterization of the intervener's evidence, it serves to clarify

that the applicants' position is not modified in face of the intervener's evidence. The statement is consistent with the applicants' overall position and cannot be prejudicial to East Coast, or, in any way influence judgment of the merits of East Coast's position. Thus, there is no basis for reversal of the examiner's ruling, and, it should be sustained. The excerpts from the State Commission reports were offered by East Coast during the rebuttal presentation by the applicants. As shown in the proffer of the excerpts, they embrace traffic data regarding Seaboard's entire operations within Florida, which covers about 1,500 miles of railroad, offered to rebut evidence of operations limited to approximately 100 miles between Marcy and Homestead. The applicants objected to receipt of the system-wide totals, and the material was excluded by the examiner. The ruling was proper and should be sustained.

[64]

In conjunction with, but neither in favor of nor opposed to the conditions suggested by East Coast, and, likewise without stating a position as to the proposed merger, is testimony offered by the United States Department of Defense, Department of the Army, Military Traffic Management Agency. The agency's sole interest in the proceeding is to protect the adequacy of railroad service to and from military installations at the Cape Canaveral missile center, and the nearby Patrick Air Force Base, as part of the defense requirements of the nation. Together, the bases employ about 21,000 persons and represent an investment of approximately $130,000,000. The bases are about 15 miles from the nearest railheads, which are the stations of East Coast at Cocoa-Rockledge, Titusville, and Melbourne. All railroad shipments for either center are delivered at the Air Force base by truck from the rail destination points. By highway, the nearest rail point other than those of East Coast, is the Coast Line station of Orlando, about 55 miles from the base. The Defense Department has not given con-

sideration to the construction of a line of railroad to reach the base area, but, inconclusive preliminary studies have been made to determine the feasibility of providing car-float facilities in lieu of direct railroad lines which would require lengthy bridge structures to reach the island on which Cape Canaveral is situated.

During the period between July 1, 1960 and March 31, 1961, in excess of 7,000 carloads of materials including sand and heavy aggregates, cement, lime rock, asphalt, structural and reinforcement steel, and other construction materials, and nearly 300 carloads of dangerous fuels, chemicals, explosives, furniture, food, vehicles and rocket motors and components were trucked to the base areas from the East Coast railheads. During the first 4 months of 1961, in addition to carload movements, the base also received more than 1,250 railway express and freight forwarder shipments. In the same 4-month period, about 260 railway express, freight forwarder, and less-than-carload shipments moved outbound by truck to the railheads.

The Defense Department considers the available combination railroad-truck service as reasonably adequate to serve the transportation needs of the Cape Canaveral installations. In the interest of national defense, in the same manner as other shippers and receivers of freight who rely upon East Coast as the primary or sole source of railroad service, the Department seeks assurance that East Coast's capacity to continue efficient operations would not deteriorate because of the anticipated diversion of essential traffic to the merged company. While the primary interest is not to achieve lower freight costs, the purpose of the Defense Department in this proceeding is to have railroad service maintained at a level as good as presently exists. Also it desires to avoid additional delays and costs and the greater hazards of considerably longer highway operations that would be entailed in trucking heavy materials and danger-

ous articles to and from Coast Line's railheads in the event that East Coast's service becomes unreliable or not available.

[65]

The Board of County Commissioners of Martin County, by resolution made part of the record, expressed opposition to the proposed merger if certain eventualities result therefrom, and also oppose the suggested requirements that Seaboard abandon its line between Okeechobee and Marcy, and make available the line south of Marcy for East Coast's exclusive operation, on grounds that any interference with or reduction in available railroad service within the county would be inimical to its best interests. Martin County is situated between the east coast of Florida in the area south of Fort Pierce and north of West Palm Beach and the northern portion of the east shore of Lake Okeechobee. The main line of East Coast serves the coastal portion of the county, including the county seat at Stuart, and a portion of the branch line from Fort Pierce to Lake Harbor traverses Martin County along the shore of Lake Okeechobee. Seaboard's line between Wildwood and West Palm Beach extends from the north-western corner of the county via Okeechobee, Marcy, and Indiantown to the approximate center of its southern boundary. The economy of Martin County is supported primarily by extensive vegetable production, flower farming, citrus groves, dairy farms, and the raising of beef cattle. It also relies upon light industry development and the attraction of tourists. The present industries include a plant and airfield of the Grumman Aircraft Company which leases land from the county and provides a sizeable payroll to its residents. A county resources promotion board is engaged in seeking to attract new industries to the area.

Southern Railway System Lines (Southern) and affected interveners. Southern, on behalf of its operating companies, Southern Railway Company, Alabama Great Southern Railroad

Company, Cincinnati, New Orleans and Texas Pacific Railway Company, Georgia Southern and Florida Railway Company (Georgia Southern), and Carolina and Northwestern Railway Company, intervened in opposition to the proposed merger. To avert serious traffic and financial injuries which Southern foresees that it and other independent railroads would suffer as a consequence of a new combined system including the properties of Seaboard, Coast Line, and L-and-N, Southern seeks the imposition of conditions which would limit the operating activities of the merged company. Specific conditions proposed, are as follows:

1. Transfer to Southern, by sale or long-term lease, of a continuous line of railroad from a point near Hardeeville, S. C., through Jesup and Savannah, Ga., and Callahan, Fla., to Crawford, Fla., to permit Southern to operate over its own railroad between Hardeeville and Jacksonville.

2. Transfer to Southern, by sale or long-term lease, or by the grant of trackage rights, or a combination of these, of a suitable line of railroad to serve the Eastport area and Blount Island at Jacksonville.

[66]

3. Transfer to Southern, by sale or long-term lease, of a continuous line of railroad from Jacksonville to Tampa, Fla., with branches extending into the phosphate mining region and to Naples, Fla., and through Sarasota to Belspur, Fla.

4. Opening of the Jacksonville gateway as to all applicants' traffic moving through Jacksonville, at the lowest rates available through other gateways.

5. Divestiture of all ownership or control by the merged company of the Louisville & Nashville Railroad Company.

6. Cancellation, 6 months after the effective date of the merger of existing trackage agreements under which Southern operates over Coast Line tracks between Selma, N. C., and Pinners Point, Va., with simultaneous right to cease operations over the described line.

As an alternative, in the event that No. 1 above is not granted, Southern requests that the Commission give it the right to cancel, at its option, the existing trackage agreements under which it operates over the Coast Line between Hardeeville and Jacksonville, and the right to abandon operations over this line at any time within a period of 2 years following the effective date of the merger.

Southern expresses fear that the combination of the lines and services of Seaboard and Coast Line and the subsidiaries of each, including L-and-N, would create a gigantic railroad empire having the power to dominate railroad transportation activities throughout the Southern Territory. It contends that such a merged company would blanket the area served by Southern; encircle most of its important route segments; and provide new direct competition at Southern's primary terminals and gateways. To afford reasonable protection to itself, Southern seeks the imposition of a condition in addition to those listed hereinabove, which would require transfer to Southern by Coast Line of its direct and indirect interests in the capital stock of L-and-N. During the hearing, the proposal that Southern acquire the stock of L-and-N was withdrawn, primarily because Southern has an existing line which provides access to the Ohio River, and certainty that other interested railroads would object to Southern having control of L-and-N. Southern asserts that its objectives would be satisfied merely by requiring that Coast Line divorce itself of any ownership or control relationship with L-and-N.

Southern presented in evidence an economic study consisting of 80 charts, diagrams, and maps prepared by a reputable consultant who supports the theory that Southern's welfare requires special conditions to protect it from adverse affects of the merger of Seaboard and Coast Line. The statistical and related data express

in money totals and various relative values, factors concerning recent economic and industrial expansion in the region served by the applicants, with particular emphasis on conditions within Florida compared to the region in question and to the entire United States. As interpreted by Southern, the studies show that the region comprising Virginia, North and South Carolina, Georgia, Alabama, and Florida has expanded in recent years at a rate considerably greater than the economy of the United States as a whole. Seaboard and Coast Line, whose lines lie entirely within the area studied, have had the support of an economy whose population, per-capita income, industrial, agricultural, mining, and manufacturing and industrial output, and whose retail, wholesale, and foreign trade patterns have steadily increased and contributed significantly to their financial health and stability. The resulting position of strength is credited with having enabled the applicants to withstand the competition from other forms of transportation more successfully than railroads throughout the remainder of the country. Likewise, data regarding the same factors as they pertain to Florida, show similar growth developments in every economic field to a degree considerably more favorable than for the southeastern region as a whole. The studies also demonstrate that the applicants, since the World War II period, each have enjoyed operating revenues, freight revenues, revenue ton-miles, net railway operating income, net investment in road and equipment, and gross additions and betterments (based upon 1950-59) more favorable than other Class I railroads generally. Other factors studied show that the applicants presently enjoy experiences better than the average prevailing throughout the railroad industry, as they pertain to operating ratios using various component and total expenses and related revenues, transportation ratios, gross ton-miles per freight train hour,

and composite revenue ton-mile per operating man hour, and other similar measures.

Numerous tables and charts depict statistically Southern's view of the prospective physical and economic strength of the merged company if operated with L-and-N as a consolidated railroad. The tabulations, among other things, show separately for each State within the Southern Territory, the number of miles of railroad in existence, and in each instance the aggregate number of miles of railroad, in respect of (1) Class I railroads within the States served by Seaboard, Coast Line, and L-and-N; (2) miles of railroad operated by the merged company together with L-and-N and other affiliates; (3) mileage of Southern; and (4) the combined total of other railroads in the area (namely, Central of Georgia, Illinois Central, Gulf, Mobile & Ohio, Norfolk Southern, Florida East Coast, and all others), as follows:

[68]

	(1) *Class I Roads*	*(2)* *SAL-ACL-L&N-etc.*	*(3)* *Southern*	*(4)* *Others*
Alabama	4,373	1,957	1,255	1,161
Florida	4,405	3,572	196	637
Georgia	5,612	2,730	1,221	1,661
N. Carolina	3,766	1,756	1,441	569
S. Carolina	3,131	1,854	1,120	157
Virginia	1,447	527	757	163
Kentucky	3,868	1,834	1,336	698
Tennessee	3,449	1,700	830	919
Totals	30,051	15,930	8,156	5,965

Shown separately for each State as components of the foregoing mileages which Southern considers would constitute the system of the merged company, are the following:

	SAL	ACL	L&N	ACL-L&N family
Alabama	198	368	1,258	133
Florida	1,464	1,865	243	0
Georgia	939	1,089	288	414
N. Carolina	630	996	13	117
S. Carolina	737	778	0	339
Virginia	179	164	85	99
Kentucky	0	0	1,831	3
Tennessee	0	0	1,644	56
Totals	4,147	5,260	5,362	1,161

The system lines of Southern include approximately 8,156 miles of railroad in Virginia, North Carolina, South Carolina, Georgia, Alabama, Mississippi, Louisiana, Tennessee, Kentucky, Ohio, Indiana, and Illinois. The principal gateways served by Southern are Washington, D. C., Appalachia, Va., Louisville, Ky., and Cincinnati, Ohio on the north; East St. Louis, Ill., St. Louis, Mo., and Memphis, Tenn., on the west; New Orleans, La., and Mobile, Ala., and Palatka, Fla., on the south; and Jacksonville, Fla., Brunswick and Savannah, Ga., Charleston, S. C., Morehead City, N. C., and Norfolk and West Point, Va., on the east. Except that Southern has a line extending southeasterly from Sparks, via Valdosta, Ga., to Palatka, and southerly from Valdosta to Perry, it has no routes within Florida south of Jacksonville. Otherwise, its routes generally serve the same terminals; and are parallel to and cross the lines of Seaboard and Coast Line, within extensive portions of the States in which they operate. Exclusive of Florida points, Southern serves practically every important point served by Seaboard, Coast Line, and L-and-N.

Pursuant to a trackage agreement between the Charleston & Savannah Railway Company (a predecessor of Coast Line) and

Southern, effective December 1, 1900 for a term of 999
[69]

years, and thereafter until terminated upon 2 years' notice by either party, Southern operates over a line of Coast Line between a point near Hardeeville, S. C., and a described junction point near Savannah, Ga., (approximately 19.9 miles) in through passenger and freight service. Also, under an agreement between Coast Line and Southern, initially dated June 10, 1902, extended by agreement dated September 26, 1944, to December 1, 1999, and thereafter until cancelled upon 2 years' written notice, Southern is accorded joint use of a main line of Coast Line between the junction near Savannah described in the 1900 trackage agreement, via Jesup and Folkston, Ga., to Jacksonville (approximately 153.6 miles), for the operation of through freight, passenger, mail, and express trains and engines. Southern's operations are subject to described restrictions reflected in traffic agreements and routing instructions issued from time to time.

The line via Hardeeville and Savannah is part of the shortest route via Southern between points in the East and Jacksonville. Nevertheless, applicable tariff routings are restricted on part of the Florida traffic (except pulpwood, paper, and related products to and from Quinlan), including traffic between points on Seaboard, and points in the East, and in the Carolinas and Virginia; and traffic between points on Coast Line (except between Jacksonville and Lake Harbor including Lake Harbor) and points on or reached via Southern north of Hardeeville or west of Jesup. Existing applicable restrictions at Jacksonville prohibit routing via Southern north of Jacksonville with certain exceptions.

Under the trackage rights, Southern has a route between Atlanta and Jacksonville via Macon and Jesup, and another route via Macon and Valdosta over the line of Georgia South-

ern. The latter route is restricted against the movement of traffic to and from Coast Line stations between Jacksonville and Lake Harbor under terms of a traffic agreement which requires that Georgia Southern traffic be interchanged at Tifton, about 159 miles north of Jacksonville. Routing agreements permit interchange at Jacksonville of pulpboard, paper, and related articles from Quinlan to points west of Macon. Traffic between points on Southern's lines in the Carolinas and Virginia, and points in the East, on the one hand, and on the other, Florida points on lines of Seaboard and Coast Line (except between Jacksonville and Lake Harbor) is interchanged at Savannah, and traffic between the West and Florida points on Coast Line, as described, is interchanged at Jesup or Tifton. The use of the Savannah, Jesup, and Tifton gateways involve schedules of Southern which are not competitive in terms of service with those of the applicants via Richmond as to eastern traffic and Atlanta as to western traffic. Compared to the combined number of cars handled by Coast Line and Southern over the trackage-rights portion of line between Hardeeville and Savannah during the 12 months ended September 30, 1960, those involving Southern's traffic were equivalent to 16.42 percent,

[70]

and the comparable ratio of Southern's cars over the trackage between Savannah and Jacksonville was 11.27 percent.

The applicants' electronic data records pertaining to the waybill studies of carload traffic originated and terminated at Seaboard and Coast Line stations during 1957, were utilized by Southern to produce independent studies of the applicants' traffic and its effect upon Southern's present and prospective revenues. Analyses by Southern are premised upon bases somewhat different than those applied by the applicants in arriving at estimates of present operating results and probable

changes in traffic and revenue potentials due to conditions of merger. Southern's recomputations result in estimations for the constructive year 1957 as to separate originating and terminating traffic to and from stations on specified portions of the lines of Coast Line and Seaboard.

Hereinafter, are summarized several of the more pertinent combined totals grouped in categories as to each line and portion selected by Southern, as follows: (a) number of carloads of freight, classified as to groups of originating and terminating at points on the lines and portions under consideration in the individual studies, (b) total gross revenues produced by the aforesaid traffic and available for apportionment according to division agreements amongst all the railroads participating in the through movements of the traffic referred to, (c) amount of revenues accruing to Coast Line for handling the considered traffic to and from its lines, (d) amount of revenue accruing to Seaboard related to traffic to and from points on the lines described, and (e) amount of revenues accruing to Southern for its participation as a prior or subsequent, intermediate originating, or delivering railroad in the handling of the described traffic. The various stations on the lines and portions of lines of the applicants, in relation to which the foregoing data is accumulated, are grouped as to the pattern of traffic flow as follows:

1. Points served locally (no other railroad service available) by lines of Coast Line or Seaboard system and points served commonly by these carriers and not served by any other railroad—

(a)	(b)	(c)	(d)	(e)
1,255,362	$300,976,135	$85,436,100	$72,115,823	$11,187,888

2. Points in Florida served locally by Coast Line and Seaboard, and those served by these carriers commonly as the only railroads available—

(a)	(b)	(c)	(d)	(e)
835,416	$190,059,436	$56,360,639	$50,243,745	$6,125,644

[71]

3. Points served by Coast Line and Seaboard systems which also are served by railroads other than one or both the applicants—

(a)	(b)	(c)	(d)	(e)
606,623	$175,676,305	$39,396,711	$46,155,826	$4,876,009

4. Points in Florida served by Coast Line and Seaboard which also are served by railroads other than one or both the applicants—

(a)	(b)	(c)	(d)	(e)
151,705	$56,145,901	$8,918,842	$20,078,747	$1,926,375

5. Points on Coast Line's Jacksonville-Orlando-Lake Alfred-Tampa-Port Tampa line, and points south of the Lake Alfred-Tampa line—

(a)	(b)	(c)	(d)	(e)
301,784	$72,571,233	$42,948,285	none	$1,982,018

6. Points on Seaboard's lines which are served commonly with Coast Line between Jacksonville and Tampa, and south of the Lake Alfred-Tampa lines—

(a)	(b)	(c)	(d)	(e)
246,157	$45,869,588	none	$27,509,876	$1,150,924

7. Points on Coast Line's Hardeeville-Jacksonville line (shown in detail for each applicant and Southern separately as to the leading destination and origin points and the related areas to and from which the traffic was handled beyond the applicants' lines)—

(a)	(b)	(c)	(d)	(e)
100,103	$22,275,216	$10,176,073	none	$470,159

8. Points on Seaboard's line served commonly with Coast Line on the Hardeeville-Jacksonville line—

(a)	(b)	(c)	(d)	(e)
77,533	$22,536,009	none	$11,242,207	$1,163,607

9. Points on Southern's lines on the Hardeeville-Jacksonville trackage-rights portion (shows 1959 data constructed on basis of March, June, September, and December 1959 records)—

(a)	(b)	(c)	(d)	(e)
51,694	$13,032,039	none	none	not shown

Southern contends that adequate safeguarding of the public interest requires that the present competition between railroads be preserved in the areas commonly served by the applicants. On that premise, the Commission is requested, upon approval of the merger herein, to require transfer of [71]

[72]

portions of the lines of Seaboard and Coast Line, particularly within areas of Florida, where Southern presently has no lines or operations. Southern offers to accord trackage rights to the merged company, if it should request to operate over the Jacksonville-Tampa and related lines which Southern would acquire. Also, in regard to traffic to and from points on the acquired lines, Southern would provide routes north of Jacksonville via lines of the merged company in competition with Southern's routes, provided the merged company would reciprocate as to traffic to and from points it serves in Florida. The proposals further contemplate that in conducting operations over the various acquired or leased portions of line, Southern would have full rights to serve industries reached by such lines, whether or not the merged company would continue to provide service at the plants concerned. The same

principles would govern Southern's operations over the lines between Hardeeville and Jacksonville, even though under the existing long-term agreements Southern is prohibited from directly serving the industries on the trackage-rights lines.

Representatives of shippers and receivers of freight, and officials of communities, counties, and various trade organizations tesitified in favor of Southern's proposals to preserve competition between railroads. Several of the interests which were represented had been permitted to intervene on the basis of petitions previously filed. Rulings against repetitive testimony which would amount to cumulative evidence if accepted, prevented the calling of numerous other persons also ready to testify, and the names and interests were supplied for the record. Several individuals on behalf of public groups in Florida, who asserted they were without counsel sponsorship testified as the examiners witnesses, and based upon prior undisclosed representations by Southern, supported the general purpose of the latter's proposals to compete directly with the merged company. Among those whose testimony and positions were taken as typical of others who would have been called if permitted, are officials of the governing bodies or civic organizations representing Liberty, Wayne, Brantly, and Charlton Counties, and Jesup, Folkston, Hinesville, and Savannah Ga.; Manatee and Volusia Counties, and Bradenton and New Smyrna Beach, Fla., and Jasper County, and Hardeeville and Ridgeland, S. C. Each submitted resolutions by their organizations stating positions consistent with the proposals of Southern.

Shippers and receivers of freight whose witnesses testified at the request of Southern, include several major business firms in Tampa, representing a wholesale lumber dealer and contractor which receives between 500 and 1,000 railroad carloads of products annually, of which about 65 percent is delivered by Coast Line at facilities located on its line, and 35

percent by Seaboard under reciprocal switching arrangements; a wholesale plywood and lumber broker and dealer which receives about 300 carloads per year, of which approximately 50 are delivered by East Coast, 30 cars by Coast Line, and the remainder by Seaboard on whose line the company's plant is situated; a company which receives

[73]

about 50,000 tons of fertilizer and fertilizer materials per year, up to 60 percent of which arrives by railroad, and distributes such products throughout Florida, mostly by trucks; and a wholesale dealer in brick and other hard building materials which receives about 500 cars per year at its facility on Seaboard's line.

In essence, the businesses represented are opposed to the creation of any company that would have a monopoly of railroad service within the areas in and through which their traffic moves. As important provider of traffic, the dealers desire to retain their existing power to instigate demands for and receive improved railroad service, better schedules of operation to expedite the movement of shipments, more reliable supply of cars, and the establishment of favorable rate structures. To this end, the industries hope to continue to rely upon the competition between separate railroads. They contend that the right of shippers to control the routing of their railroad traffic and to select which carriers should serve their plants would be extinguished if Seaboard and Coast Line, which presently compete to provide the railroad requirements of the area, should be converted to a single merged company.

The position of Southern also is supported by two of the largest manufacturers of paper and paper products in the southeast, each of which intervened in opposition to the merger herein. As interveners, they request the imposition of conditions which would provide continued competitive railroad

service in the areas presently served by Seaboard and Coast Line. The interveners acknowledge that other paper companies served by the applicants anticipate appreciable savings as a result of having additional single-line direct service available in regard to the transportation of pulpwood to their respective plants, but, assert that such benefits would not accrue in comparable degree to the plants of all paper manufacturers. They express the opinion that their own situation would be aggravated and they would be unable to meet the improved competitive position of other paper companies.

[74]

Of the aforesaid interveners, Union Bag-Camp Paper Corporation, which has several other plants throughout the southeast (Lakeland, Fla., Spartanburg, S. C., and Jamestown, N. C.) is concerned chiefly with the possible adverse effect of the merger of Seaboard and Coast Line upon the transportation situation at its major plants at Franklin, Va., and Savannah. At Franklin, where about 1,500 persons are employed, are plants which produce printing paper, wrapping paper, pulpboard, and crude tall oil—675 tons daily capacity. The facilities are served by lines of Seaboard, Coast Line, and the Atlantic & Danville Railway. At Savannah, where about 5,000 employees operate, are plants producing wrapping paper, paper bags, pulpboard, corrugated paper boxes, tall oil and related products, rosin, and turpentine—2,500 tons daily capacity. Railroad service at Savannah is provided by both applicants, Central of Georgia, Savannah & Atlanta, and Southern. At these points, Seaboard and Coast Line handle most of Union Bag's railroad traffic.

Pulpwood used at the Franklin plant originates chiefly in areas of Virginia and North Carolina. Of about 342,000 cords received during 1960, about 52.5 percent were delivered by truck, 37.5 percent by railroad, and 10 percent by barge. About

190,000 tons of chemicals and other commodities were delivered by railroad, of which about 70 percent were moved by Seaboard and Coast Line, and 30 percent by Atlantic & Danville. Reliance upon truck transportation at Franklin developed because the railroad lines do not directly serve the wood producing areas which supply the paper company's plant. Thus, a large proportion of the railroad deliveries of pulpwood entail the application of combination rates higher than those which otherwise would be available. In 1958, Coast Line acquired a railroad line owned by the paper company[11] which extends 19.6 miles to a connection with Coast Line at Franklin Junction, and Union Bag began arrangements to increase its railroad delivery of wood. It now fears that the merged company, having the line of Seaboard serving Franklin, would abandon the Franklin Junction line, and deprive the company of the benefits anticipated at the time of the sale. In that event, even greater use of truck transportation would be necessary inasmuch as Seaboard's line does not permit direct service in the movement of pulpwood, and the Atlantic & Danville (which serves areas extending about 169 miles to Danville) cannot be relied upon as it is financially weak, has been in trusteeship for several years, and might be forced to cease operations at any time.

Union Bag's plant at Savannah received 1,258,000 cords of pulpwood during 1960, of which 1,143,328 cords, or about 90 percent, moved by railroad in 58,839 cars, mainly from wood areas in South Carolina, Georgia, and Florida, with lesser amounts from areas in North Carolina and Alabama. Of the 5 railroads handling traffic to the plant, Seaboard and Coast Line

[75]

together moved about 57 percent of the pulpwood traffic. In

[11] Finance Docket No. 20025, **Atlantic Coast Line R. Co.—Purchase—Franklin & Carolina R.**, decided March 3, 1958, not printed in full.

the same year, the plant received 3,738 cars of materials other than pulpwood, of which 1,284 cars moved in local switch service, and the remainder involved line haul movements. Of the total line haul movements of such traffic, Seaboard and Coast Line together handled 1,334 cars or about 53 percent.

Outbound shipments from the Franklin plant generally are destined to points east of the Mississippi River and in the Southwest and the West. During 1960, such traffic totaled 218,076 tons, of which 125,854 tons, or 57.5 percent moved by railroad, and 92,222 tons, or 42.5 percent moved by truck. Of the railroad tonnage, Seaboard and Coast Line together handled 69 percent, and the Atlantic & Danville handled 31 percent. The Savannah plant ships to the entire United States and to many foreign countries. Its outbound tonnage in 1960 totaled 892,018 tons, of which the 630,448 tons were originated by railroads (including 55,664 tons involving local switching), 120,380 tons moved by truck, 46,184 tons by domestic water carriers, and 95,006 tons by export water carriers. Because of rate structure revisions by the railroads in February 1961, pertaining to paper and paper articles from all southern origins to southern and other destination territories, Union Bag anticipates that participation by railroads in outbound traffic would increase appreciably, and that the costs to the shipper for railroad service would become competitive with those applying to truck service.

The paper company also fears that it would suffer adversely from some of the future abandonments mentioned by the applicants, whether the portions of line in question are or are not directly concerned with operations at its plants. The assumption is that the abandonments would interfere with the established patterns of pulpwood procurement, and because other paper manufacturers would change their sources of supply, the capacity of the producing areas to continue providing the volume of wood which Union Bag requires would be impaired.

Under sueh circumstances, Union Bag asserts it would be obliged to shift its procurement areas to those involving greater distances, or to utilize higher costing multiple-line railroad service.

St. Regis Paper Company, another intervener, requests that in the event the merger is approved, the Commission require as a condition to its order, that the applicants sell to Southern or to St. Regis Paper Company, or, otherwise grant trackage rights over one of the existing lines of railroad from a connection with Southern in Jacksonville to the mill of St. Regis Paper Company at Quinlan, Fla. St. Regis engages in the manufacture and sale of kraft paper and board, paper of various types and specialties, fibreboard,

[76]

bags, boxes, and other paper products, and also produces plastics, machinery, lumber, plywood, wooden boxes and other articles. The company has more than 100 mills and plants in 78 cities, including Atlanta, Savannah, Birmingham Louisville, Jacksonville, and Pensacola. Its concern with the possible effect of the merger herein, pertains primarily to railroad service at Jacksonville where it has a paper and board mill and two fibreboard box plants which represent investments of more than $65,000,000, and plants at Pensacola which account for investments in excess of $53,000,000. The Jacksonville plants are situated at a point identified as Quinlan for tariff purposes, about 10 miles north of the business district of Jacksonville within the Eastport industrial area. The Quinlan mill occupies about 200 acres of a tract having an additional 1,200 acres, owned by St. Regis, which are available for prospective future development.

St. Regis is aware that it would benefit to the extent that merger of the applicants' lines would result in minor reductions in rates on pulpwood due to decreases in the mileages involved.

However, it fears that considerably greater costs would arise from the future abandonment of trackage of the applicants which serve areas that presently comprise sources for the procurement of pulpwood. Cited as an example of prospective adverse effect, is what might happen if the line of Seaboard between Lumpkin and Montgomery (96.42 miles) were abandoned as shown by the applicants to have been recommended for consideration. Because that line serves an extensive wood production area upon which St. Regis relies for shipments to Quinlan and Pensacola, its abandonment would cause the loss of present yards for the concentration of producers' supplies, and force the utilization of longer truck hauls from the point of cutting to available railheads equipped to handle pulpwood mechanically. St. Regis contends that such a change in wood availability would involve added transportation costs, and under those circumstances, other paper companies would be able for the first time to compete for wood, and in turn, St. Regis would be compelled to expand its procurement territory to greater distances.

St. Regis' intervention is basically related to the feeling that the abandonment aspects proposed in the merger transactions are of grave importance to itself and other users of the applicants' services. The application to merge, and the manner of its prosecution is criticized as being faulty, because, it fails to indicate with specificity which of the various recommended abandonments actually would be subject to future applications for certificates. St. Regis alleges that the applicants have deprived the shippers of a reasonable opportunity to evaluate accurately the full effect upon themselves of the merger transaction and the related changes

[77]

in lines of railroad and their operations anticipated in the future. Other reasons, similar to those mentioned by Union Bag, are expounded by St. Regis

in concluding that new competitive service by Southern if required as proposed, would afford assurance of more adequate car supply and willingness on the part of the merged company to adopt actions that would improve its service to the public.

Rebutting the evidence adduced by Southern, the applicants reveal that Southern's proposals to acquire and operate lines of Seaboard and Coast Line involves a total of 686 miles, most of which Southern asserts would be abandoned under the merger plan, while in reality, about 565 miles of those lines are not recommended for consideration of abandonment. Among the lines sought are portions which would be part of the merged company's primary freight lines to and from Savannah, Jacksonville, Montgomery, Birmingham, and Atlanta, and passenger lines to and from Miami, Tampa, and St. Petersburg; and in addition, acquisition of the line between Fort Myers and Naples, approximately 36 miles, as proposed, would eliminate operations by the merged company and establish Southern as the only railroad thereover. Graphs depicting the arrival and departure times of all regularly scheduled freight and passenger trains which the merged company would operate over the line between Savannah and Jacksonville (controlled by Central Traffic Control devices) demonstrate that the present trains which Southern operates over Coast Line's trackage between those points could readily be accommodated on Southern's schedules without excessive delays, primarily because operations of the merged company, as contemplated would be spread so that the southbound movements would be concentrated between 1 a.m., and 9 a.m., and the northbound movements would be concentrated between 4 p.m., and midnight.

Other rebuttal evidence represents that Southern's proposed operations within Florida as a competitor of the merged company would interfere with consolidation of passenger operations which the merged company otherwise could achieve; would perpetuate inefficient operation of freight and passenger

trains by each competing railroad over the lines they operate; would make it impossible to devote one line (via Wildwood) to freight operations primarily, and the other line (via Orlando) primarily for passenger operations; and would prevent the planned consolidation of the merged company's through passenger schedules and operation of solid through trains of freight in lieu of two or more lightly loaded separate trains. Other advantages which the applicants assert would be lost under Southern's proposals, pertain to the feasibility of improving efficiency of operations by consolidating traffic on proposed faster schedules over routes to and from the West via the gateways of Tallahassee, New Orleans, Montgomery, and Birmingham; the surrender of possible

[78]

maximum utilization of the modern hump yard to be constructed at Jacksonville although its size and cost would be unchanged; and the inability to eliminate duplicative yards and other facilities which would release desirable sites for industrial development along the lines of the merged company.

The values of the annual savings which the applicants believe that Southern's proposals would deprive the merged company by limiting projected consolidation features, estimated on the basis of obvious items without further study, are shown as follows: $1,200,000 by reason of not being able to eliminate certain duplicative facilities at points served by Seaboard and Coast Line; $2,000,000 involved in continued operation of lines which otherwise would be abandoned; and $2,000,000 by not being able to consolidate passenger operations and eliminate trains presently operated. Also, the applicants estimate that Southern would be required to expend between $20,000,000 and $25,000,000 to improve certain of its lines to handle considerably greater volumes of traffic at high speeds, to construct new connections with the lines of Seaboard

and Coast Line, and to provide by-pass trackage to avoid the business district of Orlando and other improvements which testimony indicates Southern promised. The applicants also point out that portions of whatever sums Southern pays to purchase the lines and properties in question would be subject to Federal capital-gain taxes which, under the circumstances, would cause the transaction to be economically unsound. Because of mortgage commitments, the applicants assert that the bulk of any funds from the sale of the properties in question, after payment of taxes, would be obligated to mortgage trustees for bond retirement, and that because the net return to the applicants would be affected by income taxes and other deductions, the purchase price would not be equitable unless it is fixed so high that its payment might seem unreasonable. Similar difficulties are foreseen in the case of a long-term lease, since rental rates which the merged company could fix to constitute a fair net return after the payment of income taxes, might not be justified by the earnings which Southern could realize after payment of income taxes.

By detailed rebuttal against the computations and conclusions presented by Southern, the applicants show that since 1913 and 1916, Coast Line and Seaboard, respectively, have been the only railroads operating to and from the Eastport industrial area; that they have actively promoted its development; and have generated considerable inbound and outbound tonnage, especially since location there in 1951 of the plant of St. Regis, and the subsequent coming of other important industries. The applicants conclude that to permit Southern to serve the area as a condition to the proposed merger would not be warranted and would constitute an unjustified invasion. Likewise, the applicants refute the existence of any need in the public interest for Southern to operate railroad

[79]

service in competition to the merged company in areas

of Florida not presently reached by Southern's own lines. Also, the applicants contend there is no logical reason for requiring the gateway at Jacksonville to be opened for participation by other railroads in regard to traffic moving to and from points in Florida on the lines of the merged company. This, it is asserted, would permit Southern's participation in the Florida traffic contrary to the terms of the long-standing voluntary agreement between Coast Line and Southern which restricts the latter's participation in such through routes. The applicants conclude that to require modification of the present restrictions on traffic via Jacksonville by imposition of the conditions suggested by Southern, would deprive the merged company of the customary right of railroads to seek to handle traffic over routes providing the greatest practicable distance via their own lines.

The applicants' position on the remaining conditions proposed by Southern is that there would be no objection to imposition of a requirement that Southern be accorded the right to cancel the Hardeeville-Savannah-Jacksonville trackage rights agreements and to abandon operations thereover, provided, that the option is limited to 6 months after consummation of the applicants' merger in lieu of the 2-year period suggested by Southern. Likewise, the applicants are agreeable to a condition that Southern have a 6-month option to request cancellation of existing trackage rights and abandonment of operations involving the line of Coast Line between Selma and Pinners Point. The applicants oppose the suggested imposition of a condition which would require the merged company to divest itself of the present holdings by Coast Line of capital stock of L-and-N. Further discussion of the position of the applicants in this connection appears hereinafter in reviewing the intervention of Illinois Central Railroad Company.

Central of Georgia Railway (Central) and affected inter-

veners. Central intervened in opposition on the premise that the proposed merger of Seaboard and Coast Line would jeopardize Central's continued handling of traffic to and from points in Florida in participation with one or both the applicants over existing through routes. Should such dissipation of its business occur, Central predicts that its future financial solvency and ability to continue operating would be endangered. In the event that the transactions are approved despite Central's position, it requests the Commission to impose a condition which would require the merged company:

> To grant to Central, trackage rights over the line of Coast Line between Albany, Ga., and Jacksonville, Fla., via Waycross, Ga., and over the line of Seaboard between Savannah, Ga., and Jacksonville, with adequate use of yard facilities for inbound

[80]

> and outbound trains and cars, and for the servicing of locomotives and other equipment on a reasonable basis in the terminal train yards at Jacksonville; and the establishment of a full line of rates, routes, and divisions via Central's routes to, from, and via Jacksonville.

Central operates 1,744.93 miles of line, of which 1,252.96 miles, are within Georgia; 488.91 miles, are in Alabama; and about 3 miles in Tennessee. Its principal lines radiate from Macon, eastward to Augusta and Savannah; north and northwestward to Athens, Atlanta, and Chattanooga; westward through Columbus to Birmingham and Montgomery; and south and southwestward to Albany, Dothan, and Andalusia. Central serves 287 stations within Georgia, of which 243 are served by no other railroad; 111 stations in Alabama, of which 91 are local; and 2 stations in Tennessee, of which 1 is served only by Central; and it serves 65 points which also are served by one or more other railroads. Traffic is interchanged with 31 railroads at 42 stations, and with Seatrain Lines, Inc., a water carrier, at Savannah. Of the points where Central interchanges traffic,

Seaboard serves 15 points, Coast Line serves 12 points, L-and-N serves 6, and other Coast Line family lines (Atlanta & West Point Railroad, Georgia Railroad, and Western Railway of Alabama) at 8 points which are not also Coast Line interchange points. The only points where both Seaboard and Coast Line interchange with Central are Albany, Savannah, Atlanta, Birmingham, and Montgomery; and at the 3 points last named, L-and-N also interchanges traffic.

Central emerged from bankruptcy, July 1, 1948, under a plan approved in *Central of Georgia Ry. Co. Reorganization*, 261 I.C.C. 263, affirmed 267 I.C.C. 76. Based upon net railway operating income, Central's rate of return on investment after depreciation and amortization rose from 0.21 percent in 1949 to 4.14 percent in 1955, but, despite concentrated efforts to attract new business and reduce expenses, the rate of return decreased every year since 1955 to 3.19 percent in 1959, and 1.25 percent in 1960. In 1960, Central experienced a decline of $2,357,992 in total operating revenues under 1959 ($41,798,258 compared to $44,156,250); net railway operating income fell from $3,988,037 to $1,535,250; and net income fell from $2,313,680 in 1959 to $354,088 in 1960.

In conjunction with the applicants' traffic to and from points in Florida and southern Georgia, Central's participation concerns traffic from and to points in Western and Central Territories, in both directions, as follows: Interchange with Seaboard—at Columbus for movement to Birmingham and to a lesser degree Atlanta; at Macon for movement to Atlanta, Birmingham, and Chattanooga; and in fewer instances, at Savannah for movements to the foregoing junctions; and interchange with Coast Line—at Albany and to a less extent at Savannah

[81]

for overhead movement to Atlanta, Chattanooga, and Birmingham. Traffic originating or destined to points on lines of

East Coast is interchanged with Central at Jacksonville by Seaboard or Coast Line for movement in the same manner as traffic to and from the applicants' stations in Florida. Central's overhead traffic also includes substantial movements involving other railroads to and from the junctions of Montgomery and Birmingham from and to Atlanta, Athens, Augusta, and Savannah in movements to points in South Carolina, North Carolina, and Eastern Territory.

Under the present separate operations of Seaboard and Coast Line, Central regularly joins with Seaboard in soliciting traffic for connection with other railroads at Birmingham and Atlanta in competition with Coast Line's routes. Central cooperates with Seaboard to assure favorable train connections and efficient service and otherwise coordinates operation of the through routes. The same situation prevails as to additional through routes involving other interchange points and gateways. Under similar practices, Central also handles Coast Line business interchanged at Augusta for movement to and from Atlanta and Birmingham. The merged company would institute new routes and improved schedules over the combined lines of Seaboard and Coast Line, and thus provide direct route service between its farthest gateways and the Florida and south Georgia origin and destination areas. Central anticipates that such action would eliminate it as a participant over existing through routes, and that its future business and revenues would be seriously damaged.

In view of the changes which it predicts would result because Seaboard and Coast Line cease competing against each other, Central disagrees with the applicants' conclusions that the merged company would divert only about $2,308,000, or 5.69 percent of Central's $40,594,000 total carload freight revenue (1957 data). It also submits that the totals shown by the applicants are understated in that they reflect estimated gains in revenues to the merged company and fail to consider

the additional losses incurred by Central, because in many instances its farthest movements between interchange points involve mileages greater than those between the interchange points which the merged company would use for its routes. Special studies were made to determine the extent of the changes in traffic and revenues, based upon records for July and October 1959, and January and April 1960, projected to show a year's results.

The studies indicate that the merged company potentially would be able to divert from Central traffic involving routes grouped separately as to interline forwarded, interline received, overhead, local and miscellaneous, which moves via Central in conjunction with Seaboard or Coast Line and

[82]

other railroads at stations also served by the applicants, aggregating (1) 47,466 carloads which provide annual revenues of $2,404,289, calculated on the basis of 80 percent of the total carload freight in overhead movements received or delivered at Macon, Columbus, and Savannah in connection with Seaboard and Florida East Coast; (2) $272,977 loss on other traffic presently interchanged with Seaboard; and (3) $578,075 loss on present traffic interchanged with Coast Line which would be diverted to the combined routes of the merged company (including $125,170 additional revenue accruring on traffic interchanged at Albany which had been understated in the applicants' estimates). In total, Central contends that $3,255,341 revenues per year would be diverted as a result of the proposed merger. It perceives of no new or other traffic that would be available to replace the revenues that would be diverted from Central upon the merger being consummated.

In view of the injuries which it fears it would suffer, Central insists that the conditions it suggests, *i.e.*, trackage rights over the applicants' Savannah-Jacksonville and Albany-Jacksonville

lines with the establishment of rates, routes, and divisions thereover; should be imposed as prerequisites in the event the merger of Seaboard and Coast Line is approved. Central asserts that such extensions of its lines would permit maintenance of competitive through freight train schedules between Jacksonville and Atlanta and Jacksonville and Birmingham, and to and from other junctions at which overhead traffic is interlined, and would afford control over its schedules for greater distances than it presently is able to control. Central contends that the trackage rights would provide it with additional gross revenues in the amount of $2,139,398 annually. The estimate is based upon re-rating of traffic which Central interlines with the applicants, based upon existing divisions via the Jacksonville gateway; and upon assumptions that Central would be able to retain its present forwarded and received interline traffic through Jacksonville, and about 20 percent of its overhead business in connection with the applicants' lines. Central would require no additional engines in such operations, and calculates that payment of reasonable charges for the proposed trackage rights and for joint use of the merged company's yard and facilities at Jacksonville would result in satisfactory net revenues to Central. Even if the conditions are imposed, Central concludes that the merged company would have a virtual monopoly of railroad transportation in Florida, and much of Central's overhead traffic would continue to be in jeopardy.

[83]

Savannah & Atlanta Railway Company (Savannah,) a wholly-owned subsidiary of Central, in its separate intervention herein, alleges that the proposed merger, if consummated, would divert a substantial portion of its traffic and revenues. Savannah operates 114.1 miles of line entirely within Georgia extending from Port Wentworth and Savannah in a northwestward direction to Camak. It connects with the Georgia Railroad at Camak, with the Georgia & Florida Railroad at Torbit,

with Central at Waynesboro, and with Central, Coast Line, Seaboard, Southern, and Seatrain Lines at Savannah. Savanah's traffic during 1958-60, inclusive, averaged 69,304 carloads totaling 2,873,488 tons per year. Of the carloads handled, with slight variations as to percentage equivalents, about 45 percent involved interline traffic forwarded from points on Savannah's line; 30 percent involved interline traffic received for delivery at such points; 16 percent was overhead traffic, and about 9 percent was local to Savannah's lines. Generally, the interline traffic originates or terminates at points in Southern Territory or in territories west of the Mississippi River and north of the Ohio River; and the overhead traffic involves Florida points on the one hand, and on the other, territories in Ohio, Indiana, Illinois, and Michigan. The overhead cars are moved in bridge service between lines of Seaboard and Coast Line connecting at Savannah, and the Georgia Railroad connecting at Camak. Of Savannah's gross freight revenues annually during the same years, which averaged $4,094,426, about 10.3 percent was produced by the overhead traffic.

Savannah asserts its belief that Seaboard and Coast Line each provides it with overhead traffic chiefly as a method of frustrating competitive attempts by the other to secure more favorable participation in the through movements. Because the merger would eliminate the competition between the applicants, Savannah concludes that substantially all the overhead traffic to and from merged company would be lost, and that such diversion would represent the measure of damage to Savannah. Based upon Savannah's 1960 overhead operations, the loss from diversion of overhead traffic would amount to $441,085 which accrued on cars handled in conjunction with Seaboard and Coast Line to and from points in Florida, rather than $118,081 which the applicants estimate that Savannah would lose. Additionally, Savannah is concerned with what the effect of the merger would be upon the Georgia Railroad, which the applicants estimate would lose $1,400,116, or 19.81

percent of its total carload freight revenues per year. Despite the absorption of such losses by Coast Line and L-and-N as lessees, Savannah

[84]

fears that the position of the Georgia Railroad would deteriorate and its ability to continue to operate and maintain satisfactory connecting schedules would be jeopardized. In that event, Savannah foresees that the overhead traffic now available in connection with the Georgia Railroad also would be diverted and leave Savannah with practically no overhead traffic.

Central's counsel offered to produce more than 100 witnesses to oppose the proposed merger and related consolidations of facilities and routes and abandonment of lines of the applicants, and generally to support the position of Central. Following statements by the examiner that the cumulative evidence rule would be applied as to any repetitive testimony, 11 representative of shippers who use the services of Central and Savannah, and 19 civic organizations and public officials of communities along the lines of Central were sworn and heard. Objections to the exclusion of additional witnesses were made, and in several instances, proffers of the testimony which would have been adduced were accepted to accompany the record. The complained-of rulings are consistent with actions concerning evidence offered by the applicants and by other interveners and constitute proper exercise of the examiner's functions.

The shipper witnesses represent manufacturers, producers, distributors, contractors, and dealers with headquarters and plants and warehouses located at Macon, Newman, Milledgeville, Americus, Wadley, Griffen, Dawson, and Blakely, Ga., and Sylacauga and Dothan, Ala. The industries which the witnesses refer to include various aspects of the production and marketing of brick, tile, heavy building materials, aluminum and aluminum extruded forms, textiles, clay, shale, wood veneer con-

tainers, crushed stone, gravel, cement, highway construction equipment, groceries, fertilizer ingredients and fertilizers, bicycles and toys, cotton, and peanuts. Each company has one or more plants at the points named or at other points on the lines of Central and Savannah, and is served either by one of those railroads, or, also by direct lines of other railroads or under reciprocal switching arrangements. Individually, the concerns either use railroads predominantly for inbound or outbound movements and utilize truck service for most of their transportation needs in the reverse direction, or, utilize railroads for movements in both directions:

The shippers generally desire to assure that Central would be protected against any serious

[85]

diversion of traffic by the merged company. They are convinced that the prospective diversion would cause decrease of Central's revenues and permanently damage its financial stability. Premised upon such beliefs, the shippers fear that Central would be forced to reduce its service, and otherwise would become unable to provide cars as required, and to operate trains and schedules suitable to the shippers' needs. Those companies which also are served by other railroads are especially interested in the continued maintenance of competition between railroads. Unless the competition is retained, those shippers fear they would lose the privilege of bargaining with each available railroad to produce improvement in service and to establish more favorable rate considerations.

The foregoing attitudes of Central and its patrons were supported by one or more officials and other representatives of local governments, members of State legislature, chambers of commerce, and trade organizations of Americus, Metter, Statesboro, Rome, Eatonton, Dublin, Millen, Sandersville, Milledgeville, and Savannah, Ga., and Sylacauga and Mont-

gomery, Ala., and the counties in which several of those points are situated. The organizations support Central and the general efforts to secure protection against the end of friendly cooperation by Seaboard, and the diversion of Central's traffic by the merged company. Opposition to the merger also is expressed on the grounds that the applicants intend to abandon the line between Lumpkin and Montgomery, which would leave areas and communities without railroad service, or, with one less railroad available. They also protest against the possible loss of railroad employment within their areas which might be the direct result of proposed consolidation of the applicants' facilities, or an indirect consequence of the adverse effect upon competing railroads because of the improved position of the merged company to compete for traffic. The attitudes and expressions of the shippers and the public witnesses on behalf of affected communities is reiterated in testimony of officials of the public service and utility regulatory bodies of Georgia and Alabama.

Several of the witnesses representing interests in Georgia, asserted their personal apprehension of the effect of the proposed merger upon the Georgia Railroad, on grounds essentially identical to their position in regard to Central. In addition, others including a major roadbuilder and general contractor of Augusta, which operates throughout the southeast, a pulpwood and lumber dealer of Harlem; a manufacturer

[86]

of boxes and wood products at Thomson; a manufacturer of plastic rainwear at Washington; and merchants, and bankers at Jonesboro, Greensboro, and Thomson, each of whom also rely to some extent upon the availability of railroad service, oppose the merger of Seaboard and Coast Line because of the possible detriment to the interest of the Georgia Railroad. Also heard in the same vein were members of the Georgia legislature from several of the affected counties and points. Rulings

against cumulative evidence excluded other witnesses who desired to present similar statements.

Concern for the interests of the Georgia Railroad, which is operated by Coast Line and L-and-N jointly under a 100-year lease to expire in 1980, was elucidated by a commissioner of the Georgia Public Service Commission and by a director of the Georgia Railroad & Banking Company, which owns the properties of the Georgia Railroad. Each asserts their groups are not opposed to railroad mergers *per se*, but, that the interests of the Georgia Railroad require preservation of its ability to compete with other railroads. They insist that the existing situation must not be impaired, and that a guarantee thereof is of greater public interest than approval of the merger and assimilation of the applicants. In this connection, they emphasize that Seaboard and Coast Line are large, successful railroads of sound financial stature, and neither is subject to any present or foreseeable future danger of loss of its power to continue in such position. The witnesses believe that Georgia Railroad would deteriorate as an active operating carrier, despite the remainder of the lease term, in the event the merger of Seaboard and Coast Line becomes a reality and traffic is diverted from the Georgia Railroad's lines for movement over the combined lines of the merged company. Practically the identical position as to the adverse effect is recited in regard to the position of the Georgia & Florida Railroad Company, an independently owned carrier which has been in receivership for many years, operates a minimal service, and has lost money consistently for at least 15 years.

Gulf, Mobile & Ohio Railroad Company (Gulf). Gulf requests that the proposed merger be denied. However, in the event the Commission finds that approval of the transaction is warranted, Gulf requests imposition of a condition that would require Coast Line or the merged company to divest itself of any financial interest in L-and-N.

[87]

Gulf operates between Chicago on the north, and Mobile and New Orleans on the south, and on its lines serves St. Louis, Kansas City, Memphis, Jackson (Miss.), Birmingham, and Montgomery. At the two points last named, Gulf connects with lines of Coast Line and Seaboard for the interchange of traffic. It also serves various stations in common with L-and-N, including St. Louis, East St. Louis, Union City, Humboldt, Jackson, Memphis, Tuscaloosa, Mobile, and New Orleans. The industries served at the principal points are reached by terminal switching lines accessible to all railroads, or, the railroads participate in reciprocal switching arrangements.

During 1960, the interchange of revenue carload traffic between Gulf and its various connecting railroads totaled 273,884 carloads; and together, interchange with Seaboard (17,522 carloads) and Coast Line (15,921 carloads), account for 12.2 percent of Gulf's total interchange traffic. Data for 1960, (somewhat less in each category than the average during 1957-60) shows interchange with Seaboard and Coast Line, as follows:

	Montgomery		Birmingham		
	SAL	*ACL*	*SAL*	*ACL*	*Totals*
Received by Gulf	5,431	3,366	837	2,940	12,574
Delivered by Gulf	7,728	7,822	3,526	1,793	20,869
Total carloads	13,159	11,188	4,363	4,733	33,443

Gulf takes issue with the applicants' estimates that the merged company probably would divert $99,341 revenues from Gulf, principally by means of changing the present point of connection from the Montgomery gateway to Birmingham in the handling of traffic to and from points served by Seaboard in Florida and Georgia. As shown, the changover would permit participation in the through routes by L-and-N rather

than continuation of the routing in conjunction with Gulf, and would result in the merged company increasing the length of the haul over its own lines and receiving additional revenues of $283,940 as its proportion of the joint rates. Based upon studies of interline settlements during May 1960 expanded by factors to reflect applicable ratios for each separate category of traffic during the entire year, Gulf submits that under the applicants' plans related to rerouting the present traffic, Gulf's loss of revenues would total $291,210 annually. Such estimate includes considering as divertible several groupings of traffic, such as that interchanged

[88]

with Coast Line at Montgomery, although the applicants cite bases for concluding that such categories generally would not be subject to diversion by the merged company. Among other premises applied, the calculations presume that Gulf's power to hold the interchange traffic it presently handles, with the exception of traffic originating or terminating on Gulf's own lines, would be absolutely ineffective against the merged company's counter solicitation efforts.

In the same vein, Gulf asserts that the merged company would deprive it of $1,332,676 revenue on 6,651 carloads of interchange traffic presently handled in conjunction with Seaboard, plus $1,518,128 revenues on 6,665 carloads interchanged with Coast Line, in the event the merged company influences the routing of traffic in favor of interchange with L-and-N instead of in favor of continuing the interchange with Gulf at Montgomery and Birmingham. Gulf contends that the modifications of routes would be possible only because Seaboard and Coast Line, as integral members of the merged company, would cease competing against each other, and, at the same time Coast Line's present proprietary interest in L-and-N would continue. Gulf subscribes to the position of

other railroad interveners herein, that the conditions suggested by the applicants to require maintenance of existing routes and gateways would not adequately protect Gulf and its future capabilities.

Illinois Central Railroad Company and affected interveners. Illinois Central avers that it does not oppose the merger of Seaboard and Coast Line, except to the extent that the applicants propose to transfer to the merged company, the capital stock of L-and-N which presently is owned by Coast Line. Illinois Central requests the Commission to impose as a condition upon approval of the proposed merger, the following:

> That the Atlantic Coast Line Railroad Company, or, Seaboard Coast Line Railroad Company (the merged company) be required to divest itself of the capital stock of L-and-N, now owned by Coast Line.

In consonance with the objective that divestiture be required, on October 10, 1960, Illinois Central filed an application under section 5(2) for authority to acquire stock control of L-and-N, identified as Finance Docket No. 21313. Such action was filed in anticipation that the Commission would impose the foregoing condition and would require sale of Coast Line's holdings of stock of

[89]

L-and-N to Illinois Central at a price per share which Coast Line and Illinois Central might agree upon, or, which the Commission would find to be reasonable. A request that the foregoing application be heard on a consolidated record with the instant merger proceeding was denied by order dated November 14, 1960, and proceedings upon Illinois Central's application were deferred pending a decision in the principal proceeding.

Illinois Central operates 6,205 miles of main and branch lines of railroad situated in 14 States. Its primary routes ex-

tend north and south along and generally east of the Mississippi River from Chicago to New Orleans, serving St. Louis, Cairo, Memphis, and Baton Rouge, with routes extending to Indianapolis, Louisville, Jackson (Tenn.), Birmingham, Meridian, and Gulfport (Miss.), and other industrial centers within the States affected. It also has routes west of the Mississippi River from Omaha, Sioux City, Sioux Falls (S. D.), Albert Lea, and Madison, to Chicago, and from Shreveport and Monroe to Vicksburg. The chief route of Illinois Central in the handling of through traffic between the Mississippi River Valley and midwest areas on the one hand, and on the other, the Southeast including the Carolinas and Florida, is via the Birmingham gateway. The only points of connection with the applicants' lines are at and within the Birmingham district, but, Illinois Central has 20 points of interchange with lines of L-and-N, the more important of which are Birmingham, Martin (Tenn.), Memphis, Evansville, and Louisville. It also connects with southern territory railroads at Meridian, Memphis, New Orleans, Martin, and Louisville. Generally, Illinois Central and L-and-N compete with each other east of the Mississippi River, and participate jointly in competition with Seaboard and Coast Line.

Interchange of carload traffic between Illinois Central and Seaboard and between Illinois Central and Coast Line increased each year (with minor exceptions) between 1950 and 1960. The growth in the number of cars delivered to Seaboard compared to the number received from Seaboard during the 11-year period, was considerably more favorable to Illinois Central than the comparable relationship of growth involving interchange cars delivered to and received from Coast Line. Illinois Central's deliveries to Coast Line increased sharply during the period, while the receipt of cars from Coast Line showed only a slight percentage increase. The disparity in the ratios is attributed by Illinois Central to the admitted policy

of Coast Line to favor L-and-N whenever permitted to do so by conditions of convenience and freedom from the prospect of any substantial

[90]

diversion of interchange by the connecting carriers. The total number of cars interchanged directly at Birmingham, and the relative rate of growth of the delivered and received categories in 1950 and 1960, are shown as follows:

Birmingham Interchange	*1950*	*1960*	*Percent of Growth*
Ill. C. delivered to Seaboard	6,583	9,339	42
Ill. C. received from Seaboard	2,072	3,305	59
Total Ill. C.—Seaboard	8,655	12,644	46
Ill. C. delivered to Coast Line	4,969	12,700	155
Ill. C. received from Coast Line	6,169	7,273	18
Total Ill. C.—Coast Line	11,138	19,973	79

Seaboard's routes between Birmingham and points in Florida and elsewhere in the Southeast are circuitous compared to the combination route via the line of Central of Georgia between Birmingham and Columbus. For that reason, Central is extensively utilized as an overhead carrier in connection with Seaboard and to a lesser extent in connection with Coast Line routes. During 1960, the interchange between Illinois Central and Central totaled 35,476 cars, of which approximately 41 per cent were involved in prior or subsequent interchange with Seaboard and Coast Line. The total direct and indirect interchange of loaded cars between Illinois Central and Seaboard or Coast Line during 1960 is estimated to involve 73,642 cars, in conjunction with which, revenues of approximately $15,000,000 accrued to Illinois Central. Approxi-

mately 65 percent of the foregoing total interchange traffic with the applicants is effected at Birmingham by direct interchange with Illinois Central. The applicants concede as likely that Illinois Central's interchange with Central would decline under merged operations because the present Seaboard traffic would be routed directly to Birmingham over Coast Line's present route.

Studies of the Birmingham interchange traffic for February and September 1960, expanded by a factor of 6 to approximate annual totals, show that the applicants presently interchange 48,030 cars with Illinois Central at Birmingham (19,920 with Coast Line, 13,434 with Seaboard, and 14,676 with Central as intermediate carrier). Illinois Central fears that by the exercise of the acknowledged plan to prefer connections with L-and-N at its northerly gateways instead of with Illinois Central at Birmingham, the merged company would cause future diversion of 12,328 carloads and the loss of approximately $2,960,269 of Illinois Central's annual revenues. The loss of

[91]

such traffic and revenues, conceivably would cause Illinois Central to reduce or eliminate the daily scheduled trains into and out of Birmingham as the demand for such service diminishes. Further, Illinois Central believes it would be unable to defend itself against diversion of traffic to the merged company's new through routes and the combination of such routes with those of L-and-N. In that connection, the applicants admit that existing policies of Coast Line, which favor the interchange of through traffic with L-and-N, would be applied by the merged company in its relations with the latter as a family line.

Illinois Central is convinced that it would receive no practical benefits if the Commission should impose the several conditions to which the applicants assent as a means of safe-

guarding continuance of existing routes, channels of trade, gateways, etc. Cognizant that similar conditions have been prescribed in numerous recent authorizations under section 5(2), Illinois Central contends that the fact that L-and-N is involved herein as an important third carrier affected by the merger proposal cancels any protection that the suggested conditions might offer to connecting and competing railroads; and that the merger would result in a new and close financial relationship between Seaboard and L-and-N which would destroy the neutrality that presently exists. Illinois Central emphasizes its fears that the merged company would favor L-and-N in the interchange of traffic, and such would be particularly onerous because together those carriers would operate and control 58.1 percent of all existing class I mileage within Florida, Georgia, and the Carolinas; and the next largest railroad would be Southern Railway, which operates only 21.9 per cent of the total mileage in that area.

In rebuttal, the applicants assert that the policies and practices now observed by Coast Line in its traffic and operation relationships with L-and-N would be adhered to by the merged company. The ownership of L-and-N stock by Coast Line has continued for about 60 years and represents an important asset which has been given consideration in evaluating Coast Line's contribution to the merged company, and in supporting the ratio of exchange of stock. While the stock owned by Coast Line is equivalent to approximately 33 per cent of the voting power of L-and-N, and Coast Line has owned as much as 51 percent thereof in years past, Coast Line never exercised control of the operations or traffic policies of L-and-N. The same voluntary restraint would be the policy of the merged company. The applicants foresee no threat of there being any appreciable

[92]

change in the flow of L-and-N's traffic, or the

manner of interchange of that traffic with Illinois Central as a consequence of the proposed merger.

Directly concerned with the position of Illinois Central that the merged company be required to divest itself of Coast Line's present ownership of capital stock of L-and-N, are the Chicago & Eastern Illinois Railroad Company, and the Monon Railroad, interveners. Each maintains interchange connections at various gateways with Illinois Central and L-and-N, and each desires to assure continuance of such arrangements. Because they consider that substantial competitive advantages would accrue to Illinois Central if it should acquire the stock of L-and-N and control the latter's operating practices and traffic policies, these interveners foresee that traffic now moving over their lines in conjunction with L-and-N would be diverted to Illinois Central. Each fears that consequences of such a situation would be detrimental to their continued existence as operating carriers, and that their respective operations would be reduced in status to that of a switching carrier with no prospect of continued profitable operations as line haul carriers.

[93]

Norfolk Southern Railway Company (Norfolk). Norfolk's intervention purports to seek protection from the adverse effect which would result from termination of the present competition between Seaboard and Coast Line in the event the merger is authorized and consummated. To offset the possible loss of revenues which applicants estimate would be in excess of $274,000 annually, Norfolk requests the Commission to impose as conditions to approval of the transactions herein, the following:

(a) Seaboard Coast Line Railroad and its connections be required to open new routes, and to maintain thereover competitive joint rates and just and equitable divisions thereof in connection with Norfolk Southern Railway

Company via Wilson, N. C., via Fayetteville, N. C., and via Raleigh, N. C., on all traffic moving between (i) all stations on the Seaboard Coast Line Railroad Company and its connections south of Norfolk Southern's line, on the one hand, and (ii) Norfolk, Va., and points in Official Territory located in the Buffalo-Pittsburgh, Eastern Trunk Line, and New England Territories, including Canada on the other.

(b) Seaboard Coast Line Railroad Company and its system lines shall maintain and keep open all routes and channels of trade via existing junctions and gateways, unless and until otherwise authorized by the Commission.

(c) Seaboard Coast Line Railroad Company and its system lines shall maintain, in connection with Norfolk Southern Railway Company, the same rates and divisions as are now in effect, unless a change is agreed upon by the parties or approved by the Commission. New rates which may be established by the Seaboard Coast Line Railroad Company and/or its system lines shall apply over all existing routes and via existing junctions and gateways, unless a change is agreed upon by the parties or approved by the Commission.

(d) Seaboard Coast Line Railroad Company and its system lines shall handle inbound and outbound traffic with neutrality so as to permit equal opportunity for service to and from all lines reaching the rails of Seaboard Coast Line Railroad Company and/or its system lines without discrimination as to routing or movement of traffic and without discrimination in the arrangement of schedules or otherwise.

(e) The present traffic and operating relationships existing between either the Atlantic Coast Line Railroad Company or the Seaboard Air Line Railroad Company on the one hand, and all lines connecting with their tracks, on the other, shall be continued insofar as such matters are within the control of Seaboard Coast Line Railroad Company.

(f) Seaboard Coast Line Railroad Company and/or its system lines shall accept, handle and deliver all cars inbound and outbound, loaded and empty, without discrimination in promptness or frequency of service as between cars destined to or received from competing carriers, and irrespective of destination or route of movement.

(g) Seaboard Coast Line Railroad Company shall not do anything to restrain or curtail the right of industries located on its and/or its system lines to route traffic over any or all existing routes and gateways.

(h) Any party or person having an interest in the subject matter may at any future time make application for modification of the foregoing conditions, or any of them, as may be required in the public interest, and that jurisdiction be retained by the Commission to reopen the proceedings upon its own motion for the same purpose.

Norfolk's main line extends from its northern terminal at Norfolk in a southwesterly direction to Charlotte, N. C., 379 miles, with branch lines totaling 210 miles from various points to Marsden, New Bern, Bayboro, Belhaven, Fayetteville, Durham, and Aberdeen, N. C., and Virginia Beach and Shelton, Va. Norfolk serves 19 points competitive with other railroads and 31 stations served by no other railroad. Of the competitive points, Seaboard serves 8, the principal ones of which are Norfolk, Raleigh, Durham, Aberdeen, and Charlotte; and Coast Line serves 8, including Norfolk, Plymouth, New Bern, Greenville, Wilson, and Fayetteville. In competition with Seaboard, Coast Line solicits traffic for joint movement via its lines and those of Norfolk to and from points common to Seaboard and Norfolk; and Seaboard solicits for joint movement in conjunction with Norfolk in respect of points common to Coast Line and Norfolk. Norfolk is convinced that consummation of the proposed merger would end such friendly arrangements, and that the merged company would solicit routings against movements in combination with Norfolk.

Generally, Norfolk's traffic consists of low grade commodities which move under low rates in relatively low density.

Since 1928, the Commission has found Norfolk to be a financially weak line and has accorded it special rate and division privileges in the form of so-called "relief line arbitraries" to the prescribed standard class rates. See *Southern Class Rate Investigations*, 128 I.C.C. 567 (594-98), and related decisions. The same status has been recognized continuously in succeeding class rate adjustments and in various decisions involving commodity rates. Norfolk also was recognized as a weak line experiencing financial difficulties in *Division of Rates, Official and Southern Territories*, 234 I.C.C. 175. Similar conditions were acknowledged in Finance Docket No. 21121, *Norfolk Southern Ry. Co. Loan Guaranty*, approved July 26, 1960.

[95]

During 1960, Norfolk handled 112,345 carloads of traffic involving 4.88 million tons of freight on which it received $9,223,548 revenue, compared to 1956 totals of 134,062 carloads, 5.46 million tons, and $10,520,251 revenue received. Overhead traffic during 1956 and 1960, in order, totaled 19,523 and 13,147 carloads; 613,813 and 414,665 tons; and $1,558,425 and $1,115,646 revenue received. Of such traffic, the portion involving freight originating or terminating on lines of the applicants involves movements received from Seaboard at Raleigh and delivered to connections at Norfolk for transshipment to points within the Buffalo-Pittsburgh, Eastern Trunk Line, and New England (including Canada) areas of the Official Territory. Studies for a period including July 1958 through June 1959 showed that such interchange traffic which originated on Seaboard's line produced revenues of $28,317, and that no revenue accrued from interchange traffic destined to points on Seaboard's lines. Because Coast Line maintains closed routes to protect its long haul, Norfolk generally is able to participate in the movement of traffic originated at or destined on the lines of Coast Line to or from points in the North, although interchange connections could be made in Fayetteville and

Wilson. Norfolk contends that conditions requiring maintenance of open routes via existing channels of trade would neither offset nor minimize the loss of revenues which the applicants concede would occur in the event the merger is approved. Therefore, it proposes that the merged company be required to establish new routes and joint competitive rates via Wilson, Fayetteville, and Raleigh for overhead movements via the Norfolk gateway. By having such routes available, Norfolk anticipates that it would be able to solicit traffic over the newly opened routes, and thus replace some of the lost traffic with new business, in the same manner that Norfolk heretofore has attracted overhead traffic to move in conjunction with its Charlotte gateways. Considering that an average revenue of $85 per car accrues on its overhead traffic, more than 3,226 carloads of new overhead traffic would be required annually to produce revenues equal to the amount of the threatened diversion, plus sufficient amounts to cover the cost of the required solicitation. Norfolk's vice-president estimates that successful solicitation in this respect for a period of 10 years would be required to increase its annual revenues sufficiently to replace the $274,000 prospective loss, and that within the 5-year period in which the expected diversion would reach the maximum amount, Norfolk's counter solicitation would have achieved only 50 percent of the total.

The applicants describe Norfolk's operations as east-west in nature, and those of the applicants as north-south which provides direct service between points in Southern Territory and those in Official Territory. As presently contemplated, the merged company would operate two freight trains, Nos. 112 and 210, in both directions through Fayetteville and Wilson, under expedited schedules to and from Richmond for interchange with connecting carriers, and such schedules would be interrupted if

Norfolk were to be permitted to participate via its Raleigh and Norfolk Gateways. Under those circumstances, it appears that any routes so contrived would not constitute the service route over which the available traffic would be attracted.

Appalachicola Northern Railroad Company (Appalachicola) and affected intervener. The interest of Appalachicola is confined to determination of the proposed abandonment, after merger, of Coast Line's branch between Climax, Ga., and Chattahoochee, Fla. Anticipating that such abandonment would have adverse economic effect upon its interests, Appalachicola requests that approval of the transactions herein be subject to a condition requiring the sale and transfer to it of the Climax-Chattahoochee branch for a consideration no greater than the salvage value which Coast Line would realize from such abandonment, or in the alternative, requiring a long-term lease to Appalachicola of the aforesaid branch line, at a fair rental based upon the salvage value thereof.

The line of Appalachicola extends 96.3 miles from Port St. Joe (on the Gulf of Mexico) to Chattahoochee, where it connects with lines of Coast Line, Seaboard, and L-and-N. Except for rack cars used in transporting pulpwood, Appalachicola is dependent upon the connecting railroads for an adequate supply of cars. During the past 5 years, it has interchanged an average of 67,681 cars per year, of which Coast Line handled about 51.24 percent, Seaboard handled 38.44 percent, and L-and-N handled 10.31 percent. In the event the Chattahoochee branch (30.8 miles) is permitted to be abandoned, all the traffic interchanged with the applicants would move over Seaboard's present line between Chattahoochee and Tallahassee, which route entails more mileage than if handled via the Coast Line route.

St. Joe Paper Company, which owns the entire capital stock of Appalachicola, intervened in support of the latter's position

and joins in requesting imposition of the aforesaid condition if the merger is authorized. The traffic handled by Appalachicola on behalf of St. Joe Paper Company comprises approximately 87.7 percent of the total annual tonnage. The paper company receives about 85 percent of its pulpwood shipments by railroad, including about 7 percent which originates at points within areas served directly by Appalachicola, and about 77 percent shipped from areas served by the connecting railroads. The paper company estimates that its railroad freight costs would increase about $222,000 per year if the objected-to abandonment is permitted. In view of that situation, it concludes that St. Joe's competitive status in the paper industry would be seriously disadvantaged, particularly because other paper companies served by the applicants would enjoy newly created single line service in regard to pulpwood presently involving interchange between lines of Seaboard and Coast Line.

[97]

Stipulations with other railroads. Admitted in evidence are separate stipulations, each dated October 14, 1960, between Seaboard and Coast Line as parties on the one hand, and on the other, the Aberdeen and Rockfish Railroad Company, the Valdosta Southern Railroad, and the Atlantic and Western Carolina Railway Company. The stipulations are identical in language except for appropriate variations in name designations, and set forth in six numbered paragraphs, conditions with which the merged company would comply, upon consummation of the proposed merger of Seaboard and Coast Line, "in so far as it lies within their power, and unless and until a change is hereafter agreed upon by the parties hereto or subsequently authorized by an appropriate modifying order of the Interstate Commerce Commission or an order of such other regulatory body having jurisdiction."

The stipulations set forth conditions obligating the merged company to maintain and keep open all routes and channels

of trade via existing junctions and gateways, and related matters pertaining to future traffic and operating relationships. Except as explained hereinbelow, the language of the conditions is precisely the same as that contained in those which the applicants have consented to accept in the event the Commission approves the merger. However, there is one instance where the language varies. The third of the stipulated conditions, referring to continuation of the present relationships between the applicants and the other party in each stipulation, omits the phrase "in so far as such matters are within the control of the Seaboard Coast Line Railroad Company," which appears in the conditions which are suggested for application as to all connecting railroads. It appears that the ommission of such language does not vitiate the provisions, or modify the intent of the conditions listed by the applicants, as discussed in detail hereinabove.

OTHER INTERVENERS

Stock exchange ratio. In December 1958, Coast Line and Seaboard separately engaged different nationally known firms of investment consultants to conduct extensive studies pertaining to the current and prospective financial positions of the applicants and their respective corporate securities, and the posture which the merged company would assume upon consummation of the merger. The firms were directed to develop various bases for negotiation of an equitable ratio of stock exchange as part of the merger plan, and each reported solely to the company which engaged it. Along with the pertinent fiscal data including final accounts for 1959 and other records and material, the financial consultants considered the conclusions and recommendations of the engineering and economic consultants discussed hereinabove.

The agreed rate of exchange of the stock of the applicants for the stock of the merged company is based upon considera-

tion of many factors reflecting the contribution by each applicant to the financial stability of the proposed merged company. Of

[98]

primary importance in the evaluation is the recorded earning power of each, and the relationship thereof to each other. Other factors present additional measures of the advantages inherent in the physical, operating, or financial position of the applicants. Among those considered are quantitative values (subject to measurement) which include the existing physical plants and equipment of each applicant; the net investment in transportation property including cash, and materials and supplies; book value of the equity involved and the related acquisition adjustment; gross operating revenues; net railway operating income; income available for fixed charges and the payment of Federal income taxes, depreciation, refirements, and amortization obligations; net income; operating ratios; adjustments of net income to reflect accounting differences; dividends received as income from subsidiaries; and stock market prices and dividends paid to stockowners by each applicant. Also considered are qualitative values (relative factors), which include various relationships between total charges and earnings; net income (reported and adjusted) and gross revenues; total indebtedness and gross revenues; debt and total capitalization; ratios of dividends to net income; computations of net working capital; the rate of return on investment before Federal income taxes; and net income available for common stock after payment of preferred stock dividends. Intangibles, the values of which are primarily matters of judgment, include the effectiveness of the present managements; the nature of the territory served by each applicant and the potential business growth of the tributary areas; the prospects of improved earning power; the character and balance of traffic available and handled; and the availability of originating traffic for movement over the railroads involved.

The studies supporting the ratio of stock exchange are based chiefly upon 10-year averages covering operations and earnings through 1959. The period is representative of recent general economic conditions and is sufficiently long to encompass a period of widely varying situations. Within the selected period are reflected war expanded activities during the 1950-53 Korean conflict, the recession of 1954, the boom years of 1955 through mid-1957, the business setback of late 1957 and 1958, and the more normal conditions of 1959. For the purpose of discerning trends based upon shorter periods, computations were made covering averages for 5 years, and for 3 years, each ending with and including the entire year of 1959. Where applicable, the recorded totals were adjusted to reflect Seaboard's acquisition of the Macon, Dublin & Savannah Railroad Company on March 1, 1958, and the merger of the Charleston & Western Carolina Railway Company into Coast Line on December 31, 1959. Calculations showing per-share earnings and related results reflect as of December 31, 1959, outstanding common stock shares as follows: Seaboard—4,834,799 shares including 55,151 held for sale under its company stock option plan, and Coast Line—2,627,256 shares including 47,275 held under its restricted stock option plan. Upon conversion of

[99]

Coast Line's stock under the proposed ratio of exchange, the merged company would have outstanding 8,565,503 shares of common stock, or, 8,687,784 shares if the options of both applicants are fully exercised. In relation to the outstanding shares, the stockholders of Seaboard would have 56.44 percent of the merged company's shares of stock, and the holders of Coast Line's common and original preferred stock would receive 43.56 percent of the total shares outstanding.

Attached hereto as appendix "L" are summaries of recorded major statistics pertaining to the operations and earnings of both applicants. The studies selected are typical of the factors

considered in the general decision by the applicants as to the equitable, fair, and reasonable ratio of exchange. The percentage relationships shown reflect each applicant's proportionate contribution to the combined total. Where the results as to the component factors are of significance for comparative purposes, the percentage ratios are applied to determine the per-share bases, or the exchange ratios corresponding to the relative contribution of each applicant in that respect.

For purposes of comparing the net income and the portion thereof available for common stock as to each applicant, statistical adjustment of the reported earnings and income totals were made to eliminate differences in accounting procedures, tax treatments, and other conditions of abnormal circumstances. The more significant adjustments entail (1) the inclusion in book equity values of acquisition adjustment allowed for purposes of ratemaking and depreciation to give effect to the elimination of special tax benefits from rapid amortization, restoration of maintenance charges to operating expenses charged to reserves by Seaboard during 1948-52, and elimination of the delayed income credit in Coast Line's earnings in 1952; (2) the substitution of more favorable operating ratios of Coast Line in lieu of the 10-year average ratio which had been distorted because of extraordinary maintenance expenditures between 1948 and 1957, inclusive, and its effect in distorting the ratio in relation to that of Seaboard; (3) credit to Coast Line of values reflected by financial benefits accruing from its ownership of stock of L-and-N, which for many years has experienced greater stability of earnings than Coast Line, to the extent that (a) the market value of the stock is substantially higher than the recorded book cost, (b) the financial and operating advantages enjoyed by Coast Line because of its power to control L-and-N, and (c) the preferred quality of the dividend income in terms of income tax benefits, all of which taken together, was taken to justify an adjustment equivalent to Coast Line's proportionate share of L-and-N's undistributed net

earnings less the dividend tax applicable each year. For similar reasons, adjustments are made in regard to accounting items of casualty reserves, vacation accruals, sale of stock under company options, investments, certain accruals, and deposits included in net working capital, intercorporate rentals and other income, and differences in outstanding debts.

[100]

Another significant adjustment relates to evaluation of the holdings of properties and lands presently not used or necessary for railroad operations, but, available for future expansion of industries served by the merged company, or to provide additional transportation facilities which would add to the applicants' respective contributions to the earning potential of the merged company. Related as a specific incident is the elimination of certain non-transportation properties of Coast Line which affected the value of its capital stock, and the total value of the properties owned by Coast Line. Involved was a landholding subsidiary, the Atlantic Land & Improvement Company, which during many years had acquired considerable land in Florida. A large portion of such properties was not usable for railroad purposes or for industrial development which would benefit Coast Line's railroad business. In 1948, title to the lands in question was transferred to the so-called "South Florida Project" organized to plan water-control and other land improvement programs and to institute agricultural development of the properties. In 1959, a new Florida corporation, the Alico Land Development Company (Alico) was created. As approved by the Internal Revenue Service in a ruling regarding tax aspects, Alico's capital stock was exchanged for the land and other assets of South Florida Project. The entire issue of Alico's stock, approximately 2,650,000 shares, was held by Coast Line's landholding subsidiary. On February 25, 1960 the stock was spun off to Coast Line, and on March 31, 1960, it was distributed to the latter's stockowners at the rate of 1 share for each share of Coast Line stock.

Within the period prior to and immediately following the spin-off, quotations of the price of Coast Line stock on the New York Stock Exchange fluctuated as follows: Between January 1, and February 24, 1960, the price ranged between $51 and $58.63 per share; between February 25 and 29, it ranged between $45.13 and $48.50 per share; between March 1 and April 30, its range was between $40.50 and $46.00 per share; and on June 23, 1960, Coast Line's stock sold at prices between $53.25 and $53.75 per share. The quotations of $58.63 which occurred on February 24, and $40.50 which was recorded on March 4, represented the highest and the lowest sales prices during 1960. Following the "spin-off," Coast Line's properties usable for transportation purposes were appraised at $45,000,000 market value (about $11,000,000 book value), which exceeds the market value of Seaboard's holdings of similar properties by about $25,000,000.

To estimate the results of the future operations and position of the merged company, a further adjustment was deemed to be essential to determine allowances properly creditable to each applicant because of its contribution to the prospective savings and increased earnings which the proposed consolidation of the properties and operations of the applicants would produce. Using the conclusion of the engineer consultants that more than $38,700,000 savings would be generated each year after the fifth year of merged existence, the financial consultants and applicants' officers

[101]

agree that the $18,580,000 per year remaining after payment of corporate taxes should be divided equally to the credit of Seaboard and Coast Line. Thus, the net savings involved would amount to approximately $2.14 per share of the merged company and of Seaboard's present stock, and $3.04 per share on Coast Line's stock after conversion on the basis of 1.42 to 1. Improvements in the value of each appli-

cant's stock would vary in proportion to the actual savings which would inure. Assuming that 100 percent of the estimated savings are realized, the potential earnings improvement to the shareholders of Seaboard and Coast Line would be as follows:

Past Operations Base	Net Income Per Share	Adjusted Net Income (*)	Gain Per Share
		SEABOARD AIR LINE	
10-year average	$3.79	$5.73	$1.94
5-year average	3.80	5.64	1.84
3-year average	3.46	5.34	1.88
		ATLANTIC COAST LINE	
10-year average	4.79	8.14	3.35
5-year average	4.47	8.00	3.53
3-year average	4.13	7.59	3.46

(*) Includes estimated net savings $18,576,000.

[102]

The full effect of each of the adjustments outlined hereinabove, and others applied to the recorded average annual totals of accounts covering the 1950-59 period, are summarized in appendix "M" attached hereto. Application of the adjusted totals shows relationships and ratios of Seaboard's contribution to the merged company compared to comparable contribution of Coast Line, as follows:

	Seaboard	Coast Line
Percent of contribution to combined earnings of merged company	$57.85	$42.15
Earnings per share (4,898,950 shares SAL; 2,700,481 shares ACL)	3.124	4.129
Ratio—Coast Line to Seaboard		1.322

Effect on ratio of estimated annual savings $18,576,000 after taxes, divided one-half each to Seaboard and Coast Line on percent of predicted savings, as follows:

20 percent	1.375
40 percent	1.418
60 percent	1.453
80 percent	1.483
100 percent	1.508

On their own behalf as individuals, intervention was permitted by an owner of several thousand shares of Seaboard stock, and by the owner of an undisclosed smaller number of shares of Coast Line stock. Each participated in corss examination of the executives and fiscal officers and consultants of the applicants. The holder of the Seaboard shares is opposed generally to the proposed merger, and expresses particular concern that the merged company might be controlled and operated in common with the L-and-N, for which reason he requests that if the transactions herein are approved and authorized, a condition be imposed which would require Coast Line to divest itself of holdings of the capital stock of L-and-N.

Incidental to his interest in the stock ratio, the holder of Coast Line stock is concerned about the alleged existing common control of Coast Line and L-and-N by Merchantile, and opposes the trust company's acquisition of control of Seaboard through ownership of the merged company. In that connection, he requests denial of the supplemental application of Mercantile, including its request to be considered not a carrier subject to the act. He also requests the Commission to require Coast Line to spin-off its holdings of L-and-N stock to the present holders of Coast Line stock, or, in the alternative, to order the sale of such stock with the proceeds to be used for retirement of Coast Line's outstanding bonds.

The Coast Line stockowner is of the opinion that the exchange of stocks should be at the rate of three shares of the merged company's stock for each outstanding share of Coast Line common stock, and one share of the new stock for each share of Seaboard's outstanding stock. In his view, to the extent that any other exchange ratio is asserted, the applicants have failed to satisfy the burden of proving the exchange ratio to be fair and reasonable. He proposes that any approval of the transaction should require the stock exchange ratio to be modified to favor Coast Line as suggested. This intervener contends that his position is supported by various factors, as follows: Relative book value per share of stock of the applicants; relative market value per share of the applicants' respective stock issues (cites prices during 1957); the ratio of the miles of roadway, and operating equipment and locomotives owned, stated as favoring Coast Line by ratios ranging between 2.07-to-1 and 2.57-to-1; and Coast Line's greater investments in other railroads and its assets other than railroad properties.

The Seaboard stockowner is convinced that the merger plan, if consummated, would confer upon present Coast Line stockowners an undeserved tax-free windfall of 42 "bonus shares" of the merged company's stock plus related dividends, for each 100 shares of Coast Line stock. He argues that the principal benficiaries would be the ACL company and the Mercantile interests. In his estimation, the ratio of exchange disregards many fundamental financial elements (unless subject to adjustments that he believes unjustified) which should be considered in evaluating the proper basis of exchange. In support of that position, he presented selected general railroad statistics showing annual averages per mile of road for 1950-59, inclusive, which pertain separately to such items as net operating income, net income after fixed and contingent charges, return on investment, dividends paid, and operating revenues and expenses for Seaboard, Coast Line and L-and-N, and comparable averages pertaining to all Class I railroads in the Southern

Region, including the considered railroads. By comparisons of the items shown for Seaboard and Coast Line, and the ratios of of each to averages pertaining to other railroads in the same area, the intervener argues that Seaboard is a much better earner than Coast Line on any basis, and is a better earner than the railroads of the region as a whole.

In addition to the foregoing considerations which the intervener believes understate the value of Seaboard's contribution to the merged company, he alleges that the treatment of important factors overstate the position of Coast Line. Among examples cited, are the following: (1) Accounting adjustments of recorded earnings presumably to eliminate prior distorted earnings, (2) fictitious capitalization in terms of

[104]

earnings based upon inflated values of Coast Line's investments in (a) industrial land and other real properties (without appraisals by disinterested persons), (b) investments in securities of other railroads and dividends received thereon, (c) equal sharing of full savings after taxes contemplated to accrue as a result of the proposed merger, and (d) assignment of credit for Coast Line's proportion of undistributed earnings of L-and-N; and, (3) disregard of the disparity in Coast Line's long-term debt and fixed charges compared to those of Seaboard.

Effect upon employees. The predicted savings pertaining to the proposed consolidations, abandonments, changes in operations, pooling of facilities and equipment, and other benefits to the merged company include substantial reductions in labor costs. Computed at January 1, 1960 levels, after the fifth year of merger, payments to employees in wages and salaries, vacation and holiday pay, and health and welfare benefits would be reduced by $25,539,061 annually, and related payroll taxes amounting to $3,114,000 would be saved. Successively, during the first 5 years after consummation of the merger, the cumula-

tive amounts of wage savings would be as follows: (stated in millions of dollars) 5.69, 13.61, 21.27, 24.01, and 25.52. Translated into positions available and employee assignments, the proposals would eliminate approximately 4,257 jobs, and in addition, would require 4,439 employees to change their present job locations to other points where the merged company would operate.

The labor costs of the merged company shown in the studies are computed upon the higher applicable rates of compensation in instances where a difference presently exists between Seaboard and Coast Line as to working rules, rates of pay, and the extent of benefits provided employees within similar classifications. Jobs involving less costly rules and rates of pay would be abolished. The adjustments necessary to equalize the classification of postitions, and to provide favorable rules and compensation to employees of the merged company would involve additional wage costs amounting to $1,030,000 annually, plus $140,000 related payroll taxes, or, $1,170,000 total.

In their application and at hearing the applicants agreed to accept for the protection of adversely affected employees, conditions such as those contained in the so-called *"Washington Job agreement"*[12] dated May 21, 1936, voluntarily entered into [104] between most of the railroads in the United States and

[105]

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[12]Provides payments in respect of four types of adverse effect, as follows: (1) **Displacement allowance.** Covering employees placed in a worse position, but, who do not lose their jobs—equal to the difference in compensation before and after the change in employment. (2) **Consolidation allowance.** Covering employees deprived of employment—equal to 60 percent of the employee's average compensation, reduced by compensation received in other employment during the period of protection. (3) **Separation allowance.** Covering employees deprived of employment—a lump sum payment which may be accepted in lieu of a consolidation allowance. (4) **Moving allowance.** Covering employees required to change their place of employment—equal to the cost of moving and travel expense entailed, and, the monetary loss on the sale of the employee's home.

21 standard labor organizations representing employees of the railroads.

The applicants estimate that the cost of providing such protection to the affected employees would total $14,509,672, of which $1,782,612 would be expended during the first year after consummation of the merger, and in the remaining years of the first 5-year period, the costs entailed would be, in order, $4,032,068, $5,402,064, $3,092,804, and $200,124. The amounts expended in providing protection to adversely affected employees of the applicants are chargeable to operating expenses, and thus would become a deduction in computing Federal income taxes. At the current tax rate of 52 percent, the cumulative reduction in income taxes would be $7,545,029, and the remaining $6,964,643, would be the merged company's net cost.

For purposes of arriving at the estimated cost of the employees protection program, the applicants assume that affected employees would be obliged to accept offers from the merged company of any suitable position at a point that would require transfer to a different location (with proper compensation for moving and other allowable costs). While, on that theory, a refusal to transfer would be considered as terminating the employee's rights and relieving the merged company from the obligation to provide protection, the applicants assume that the employees would prefer to transfer rather than forego the prescribed protection. Also, the estimations assume that wherever practicable during the period of consummating the merger and changes in operation, job openings created by normal attrition would be filled by eligible employees displaced or otherwise disturbed as a result of the merger. Projections of the rate of attrition during the first 5 years after the merger takes effect indicate that jobs vacated through occurrence of death, retirements, dismissals, resignations, and other normal causes would total 1,134 annually, or, 5,670. Because most resignations affect junior jobs and generally do not represent suitable replacement

for persons whose jobs would be abolished, openings by attrition would not provide job availability for all empolyees expected to be affected by the merger transactions.

[106]

On behalf of 24 national and international standard railway labor organizations representing members employed by Seaboard and Coast Line, Railway Labor Executives' Association (Labor) contends that the proposed merger transaction is not consistent with the public interest, and therefore must be disapproved in its entirety. However, in the event the transactions in question are approved, Labor requests imposition of conditions[13] for the protection of adversely affected railway employees pursuant to the provisions of section 5(2)(f), as follows:

> 1. If as a result of the transactions herein authorized, hereafter referred to as the transaction, any employee of the applicants or other carrier or carriers by railroad affected by the transaction, is deprived of employment with said carriers, said employee, hereinafter referred to as a dismissed employee, shall be accorded a monthly dismissal allowance equivalent to one-twelfth of the compensation received by him in the last twelve months of his employment in which he earned compensation prior to the date on which he is first deprived of his employment as a result of this transaction. This allowance shall be made during the protective period to each dismissed employee while unemployed, provided, however, that no such allowance shall be paid to any employee who fails to accept employment with seniority rights at a point which does not require a change of residence if offered a position, the duties of which he is qualified to perform and for which he is eligible.
>
> The dismissal allowance of any dismissed employee who is otherwise employed shall be reduced to the extent that

[13] As proposed, the conditions are asserted to embrace provisions of the **Washington Job Agreement** "with certain modifications necessary to meet minimum requirements of the second sentence of section 5(2)(f)."

his combined monthly earnings in such other employment, any benefits received under any unemployment insurance law, and his dismissal allowance exceed the amount upon which his dismissal allowance is based. Such employee, or his representative, and the carriers, should agree upon a procedure by which the carriers shall be currently informed of the wages earned by such employee in employment other than with the carriers, and the benefits received.

[107]

The dismissal allowance shall cease prior to the expiration of the protective period in the event of the failure of the employee without good cause to return to service after being notified by the carriers of a position, the duties of which he is qualified to perform and for which he is eligible, or in the event of his resignation, death, retirement on pension, or dismissal for good cause.

2. Any employee eligible to receive a dismissal allowance under Condition No. 1 hereof may, at his option and within 30 calendar days (excluding Saturdays, Sundays and legal holidays) following the date on which he is deprived of employment, resign and in lieu of all other benefits and protections provided in these conditions, accept in a lump sum a separation allowance determined in accordance with the following schedule:

Length of service	Separation Allowance
1 year and less than 2 years	3 months' pay
2 years and less than 3 years	6 months' pay
3 years and less than 5 years	9 months' pay
5 years and over	12 months' pay

In the case of an employee with less than one year's service, five days' pay, at the rate of the position last occupied, for each month in which he performed service will be paid as the lump sum separation allowance.

3. No employee of the applicants or other carrier or carriers by railroad affected by the transaction authorized herein who is continued in service shall for the protective period as a result of the transaction be placed in a worse position with respect to compensation and rules governing working conditions than he occupied on the date on which the transaction is approved so long as he is unable in the normal exercise of his seniority rights under existing agreements, rules and practices to obtain a position producing compensation equal to or exceeding the compensation of the position held by him on the date on which the transaction is approved, provided the exercise of the employee's normal seniority rights to secure another available position does not require a change in residence.

Whenever an employee is displaced, that is, placed in a worse position with respect to his compensation as a result of the transaction, and so long (during the protective period) as he is unable in the normal exercise of his normal seniority rights

[108]

to obtain a position producting compensation equal to or exceeding the compensation of the position from which he was displaced, provided such available position would not require a change in residence, he shall be paid a monthly displacement allowance equal to the difference between the monthly compensation received by him in the position in which he is retained and the monthly compensation received by him in the position from which he was displaced. The latter compensation, referred to hereinafter as a "displacement allowance," shall be determined by dividing separately by 12 the total compensation received by the employee and the total time for which he was paid during the last 12 months preceding his displacement as a result of the transaction (thereby producing the average monthly compensation and the average monthly time paid for, which shall be the basic amounts upon which a displacement allowance shall be determined). If the displaced employee's

compensation in his current position is less in any month in which he performs work than the aforesaid compensation he shall be paid the difference, less compensation for any time lost on account of voluntary absences to the extent that he is not available for service equivalent to his average monthly time, but he shall be compensated in addition thereto at the rate of the position filled for any time worked in excess of the average monthly time paid for; provided, however, that nothing herein shall operate to affect in any respect the retirement on pension or annuity rights and privileges in respect of any employee.

4. No employee affected by the transaction approved herein shall be deprived during the protective period of any incidents of his previous employment such as the benefits to which he may be entitled under the Railroad Retirement Act, supplemental pension plans, free transportation for himself and his family, life insurance, hospitalization and medical care (whether through a hospital association or an insurance plan), relief and all other incidents of his employment to which he may have been entitled prior to our approval of the transaction herein.

No employee shall be deprived of his vacation rights as a result of the transaction. Whenever an employee is deprived of his employment and secures other employment, if his vacation rights in the new employment are less than those of his former employment with the carriers, he shall be paid by the carriers an amount equivalent to the difference in vacation time allowed in his new position and that to which he was entitled on his former position. Said amount to be determined in accordance with the provisions of Condition No. 1 hereof and in addition to any allowance provided by Condition No. 1.

[109]

5. In the event an employee is displaced to a position requiring expenditures of money for travel, meals, etc., which

was not required of the employee in his former position, the carriers shall reimburse him for said expenditures during the protective period.

6. Any employee retained in the service of the applicants or other carriers by railroad affected by the transaction herein approved or who is later restored to service after being entitled to receive a dismissal allowance, and required to change the point of his employment as a result of the transaction, and within the protective period is required to move his place of residence, shall be reimbursed for all expenses of moving his household and other personal effects, for the traveling expenses of himself and his immediate family, and for his own actual wage loss, not to exceed two days, the exact extent of the responsibility of the carrier is to be agreed upon in advance by the said carriers and the employees affected or their representatives.

If any such employee is furloughed after changing his point of employment as a result of the transaction, and elects to move his place of residence back to his original point of employment, the carriers shall assume the expense of moving his household and other personal effects under the conditions imposed in the preceding paragraph of this Condition No. 6.

Changes in place of residence subsequent to the initial changes caused by the transaction, which do not result from the transaction but grow out of normal exercise of seniority, shall not be considered as within the foregoing provisions of this condition.

7. In the event any dispute or controversy arises with respect to the protection afforded by these conditions or with respect to their interpretation, application, or enforcement, which cannot be settled by the carriers and the employee or his authorized representatives within 30 days after the dispute arises, it may be referred by either party to an arbitration com-

mittee for consideration and determination. Upon notice in writing served by one party on the other of intent by that party to refer the dispute or controversy to an arbitration committee, each party shall, within 10 days, select one member of the arbitration committee and the two members thus chosen shall select a third member who shall serve as chairman. Should the two members be unable to agree upon the appointment of the third member within 10 days, the parties shall then within an additional 10 days agree to a method by which

[110]

a third, or neutral, member shall be appointed. The decision of the majority of the arbitration committee shall be final, binding and conclusive. The salaries and expenses of the third member shall be borne equally by the parties to the proceeding and all other expenses shall be paid by the party incurring them. This Condition No. 7 shall be applicable to all matters arising with respect to the foregoing Conditions Nos. 1, 2, 3, 4, 5 and 6.

In proceedings arising under this Condition No. 7, the employees shall have the burden of establishing a *prima facie* case. The carrier then shall have the burden of proving that the employee was affected as the result of circumstances unconnected with the transaction.

8. (a) The following conditions shall apply, to the extent applicable in each instance, to any employee who is retained in the service of any of the carriers (or who is later restored to service after being entitled to receive a dismissal allowance), who is required or elects to change the point of his employment within the protective period as a result of the transaction herein approved and is therefore required to make a change of residence:

1. If the employee owns his own home in the locality from which he is required to move, he shall at his option be reim-

bursed by the merged carrier for any loss suffered in the sale of his home for less than its fair value. In each case the fair value of the home in question shall be determined as of a date sufficiently prior to the filing of the applications by the applicants herein, to be unaffected by the filing of said applications. The merged carrier shall in each instance be afforded an opportunity to purchase the home at such fair value before it is sold by the employee to any other person.

2. If the employee is under a contract to purchase his home, the merged carrier shall protect him against loss to the extent of the fair value of any equity he may have in the home and in addition shall relieve him from any further obligation under the contract.

3. If the employee holds an unexpired lease of a dwelling occupied by him as his home, the merged carrier shall protect him from all loss and costs in securing the cancellation of his said lease.

(b) Changes in place of residence subsequent to the initial change caused by the consummation of the transaction herein approved and which grow out of the normal exercise of seniority in accordance with the working

[111]

agreements and do not result from actions taken by the merged carrier as a result of the transaction, are not comprehended within the provisions of this Condition.

(c) No claim for loss shall be paid under the provisions of this Condition No. 8 which are not presented within one year after the date the employee is required to move.

(d) Should a controversy arise with respect to the value of the home, the loss sustained in its sale, the loss under a contract for purchase, loss and costs in securing termination of a

lease, or any other question in connection with these matters shall be decided through joint conference between the representatives of the employees and the carrier on whose line the controversy arises and in the event they are unable to agree, the dispute may be referred by either party to a board of three competent real estate appraisers, selected in the following manner: One to be selected by the representatives of the employees and one by the carrier, and these two shall endeavor by agreement within 10 days after their appointment to select a third appraiser, or to select some person authorized to name the third appraiser. A decision of a majority of the appraisers shall be required and said decision shall be final and conclusive. The salary and expenses of the third or neutral appraiser, including the expense of the appraisal board, shall be borne equally by the parties to the proceedings. All other expenses shall by paid by the party incurring them, including the compensation of the appraiser selected by such party.

(e) In those instances comprehended by this Condition No. 8, where an employee is required to move his place of residence and desires to purchase a home or lease a dwelling to be occupied by him as his home at his new point of employment, the fair value of the new home or lease shall be determined as of a date sufficiently prior to the filing of the applications herein as to be unaffected thereby. Disputes or controversies arising as to the interpretation or application of the protection afforded by this subparagraph (e) shall be resolved in accordance with the procedures set forth in subparagraph (d) of this Condition No. 8.

9. If any carrier shall have rearranged or adjusted its forces in anticipation of approval of this transaction, with the purpose or effect of depriving an employee of benefits to which he should be entitled under these conditions as an employee affected by the transaction, these conditions shall apply to such employees as of the date when he was so affected.

[112]

10. When the merged carrier contemplates taking action as a result of the transaction which will result in the dismissal, displacement or transfer of employees, it shall give at least 90 days written notice of such intended action by posting a notice on bulletin boards convenient to the interested employees of such carrier and by sending by registered mail notice to the representatives of such employees. Such notice shall contain a full and adequate statement of the proposed changes to be effected, including an estimate of the number of employees in each class affected by the intended changes. The date and place of a conference between representatives of all the parties interested in such intended changes for the purpose of reaching agreements with respect to the application thereto of these conditions, shall be agreed upon within 10 days after receipt of said notice and conferences shall commence within 30 days from the date of said notice.

11. (a) The term "affected" as used herein shall be understood in its ordinary sense indicating the production of an effect.

(b) The term "deprived of employment" as used herein shall be understood as meaning the abolishment of a position and the inability of the incumbent thereof to secure another position by the exercise of seniority rights or the loss of a position by an incumbent as a result of the exercise of seniority rights by another employee, if the incumbent is unable by the exercise of his seniority rights to secure another position.

(c) The term "as a result of the transaction" shall be understood in its ordinary sense indicating an effect or consequence of or as proceeding, arising or springing from the transaction approved.

(d) The term "protective period" shall mean that period of time from the effective date of our order herein to the expira-

tion of four years therefrom, provided, however, that with respect to individual employees, such period shall not continue for a longer time following the effective date of our order than the period during which the particular employee concerned was in the employ of the carriers prior to the effective date of our order.

(e) A "change in residence" shall be deemed to occur only if the point to which the employee is required to transfer increases the distance from his former home to the point of his former position by more than 10 straight line miles.

[113]

Labor points out that the foregoing proposals would not extend the protection to employees beyond the 4-year statutory period, and requests additional protection for employees who may be adversely affected by changes which occur during the third, fourth, or fifth years following the effective date of the Commission's order, by inclusion of an appropriate provision, the effect of which would be, as follows:

> If the total amount of compensation paid under the conditions is less than adversely affected employees would have received under the *Washington Agreement*, applied from the date of adverse effect, then they are entitled to the remaining benefits that they would have received under the latter.

Labor also suggests that in order to assure "fair and equitable protection" to the affected employees, imposition of the foregoing conditions should be further limited, as follows:

> A. On the effective date of our order herein the merged carrier shall take into its employment all employees of the carriers from which the merged carrier results.
>
> B. No employee of the predecessor carriers who was actively employed on the date of the filing of the application herein shall be deprived of employment or placed in a worse position with respect to compensation at any time

during his employment because of the merger approved herein or because of any program of economies resulting from the merger; provided however, that the representatives of the employees and the merged carrier may agree, pursuant to authority granted by the third sentence of Section 5(2)(f), to methods combining the work forces of the merged carrier which may result in the recall of presently furloughed employees and the furlough of a presently active employee in which event the latter employee shall be entitled to the protections set forth in the conditions prescribed hereinabove.

C. All disputes regarding the interpretation, application or enforcement of the provisions of paragraphs A and B shall be resolved in accordance with the procedure set forth in Condition No. 7 of the aforesaid conditions.

Testimony was received separately on behalf of various categories of employees of Seaboard and Coast Line, together

[114]

represented by 11 organizations which are members of Railway Labor Executives' Association, and on behalf of dining-car employees of both applicants represented by an independent union. Each group is represented by a general chairman elected by the members, who negotiates with management in matters pertaining to employment rights and obligations. Statements prepared by the chairmen were received and the responsible person was cross examined, or, upon stipulation as to their purpose, the statements were received without calling the witness. Each organization representing particular classes or crafts of employees is party to individual collective bargaining agreements and amendments, revisions and supplements thereto. These constitute working agreements which set forth terms and conditions governing hours of service, schedules of rates of pay, standards of working conditions, assignments, hours of work, claims, grievances, and other aspects of the employees' indi-

vidual and group status. They also describe methods of establishing and maintaining seniority rosters which provide means of assuring the continued employment of individuals with the railroad based upon the employee's length of service. The rosters are tailored to fit particular situations, and each is restricted to listing persons holding positions embraced within particular types or classes of employment and job descriptions, and is further limited to particular geographical, departmental, or operational aspects, and by various combinations of these and other characteristics of the jobs.

[115]

Generally, among interested employees who are fit and able to perform the duties pertaining to positions available, those with the greatest seniority have entitlement to consideration prior to persons with lower seniority ratings. Employees' standings on the roster of a particular seniority district are not interchangeable with standings relating to other seniority areas on the same railroad, and of course, have no status on other railroads. When available, positions or assignments are filled through the exercise of seniority rights, the next eligible junior employee becomes vested with entitlement to fill the new vacancy by promotion. Conversely, as positions are abolished or otherwise eliminated and reductions in force take place, the incumbent employee, upon being displaced, is entitled to assignment to any position regularly held by individuals with lower seniority. This procedure results in "rolling down" or "bumping" of less senior employees. Ultimately, the employee most recently assigned to a regular position becomes separated from his employment either by furlough for a temporary period, or, permanently by dismissal. Under normal bumping processes, a single job abolishment conceivably might cause displacements, reassignments, transfers, and dismissals affecting as many as 175 employees within a particular seniority district. More conservatively, every job elimination that would

result from consummation of the proposed merger could be the cause of between 10 and 30 present employees of Seaboard and Coast Line involuntarily changing their residences and otherwise suffering some degree of personal and family disturbance.

Employee witnesses expressed fears that railroad employees who become newly unemployed would face problems compounded by factors related to the existing unemployment in the railroad labor market. For example, many of the previously furloughed and dismissed employees may possess a prior right to be recalled to service, if and when conditions warrant; the lowest senior employees affected by reductions in force attributable to the merger would be older persons with considerable seniority, inasmuch as younger persons have become displaced in recent years because of other reasons; railroad employment opportunities would become increasingly scarce as additional railroads effectuate proposed consolidations and commence streamlining their forces; and many of the skills attained in railroad employment are not readily adaptable to other industrial jobs. The employees also desire to avoid being required to transfer their assignments to other localities because of the disruptive effect upon themselves and their families and other dependents, and, because they foresee the possibility that they might be forced to make a series of changes in order to retain their earned seniority rights.

A member of the executive committee of the Railway Labor Executives' Association, who also is president of an affiliated organization of railroad employees, appraised the expected total effect of the merger proposed herein upon the employees of Seaboard, Coast Line, and competing railroads from which the merged company would divert traffic and revenues. Supporting the general premise that railway employees have been and presently continue to be subject to increasingly severe unemployment conditions, are cited

statistics showing that average number of persons employed by Class I railroads in the United States decreased from 1,420,266 during 1945 (after World War II), to 1,206,312 during 1953 (after the Korean War), and continued to fall off each year thereafter to approximately 700,000 employees during 1961; and that the persistent incidence of railroad unemployment contributes largely to the general unemployment in many areas classified as "distressed" because of substantial labor surpluses.

Labor's position is that the prospective plight of railway employees now is vastly different than when the Commission heretofore from time to time considered individual applications by railroads for authorization to merge. More serious consideration of the effect upon employees is asserted to be mandatory today in view of there prevailing at this time an "era of mass merger" in which railroads throughout the United States are involved. That situation is said to arise from the filing within a relatively short time of each other, the application under consideration, and other applications by major railroads, each seeking authority to merge the properties of existing railroad entities, or, to acquire financial and/or managerial control of independent railroads through ownership of capital stock. In view of the present trend of major railroads to seek authorization to affiliate with other railroads as a means of reducing operating expenses, primarily by shrinking the employment forces, Labor submits that the conditions heretofore applied in section 5 cases are not sufficiently broad in coverage to provide fair and equitable protection to carrier employees.

The previously imposed conditions are criticized as being inadequate in the present situation, in that the protection afforded fails to assure that the authorized transactions would not result in the affected employees being in a worse position

with respect to their employment, as required by the statute. Specifically mentioned are the conditions prescribed by the Commission in *New Orleans Union Passenger Terminal Case,* 282 I.C.C. 271, which embrace provisions of the *Washington Job Agreement,* and those in *Oklahoma Ry. Co. Trustees Abandonment,* 257 I.C.C. 177. These have been adopted in numerous recent decisions authorizing mergers and related transactions. See *Louisville & N. R. Co. Merger,* 295 I.C.C. 457, and *Erie R. Co. Merger,* 312 I.C.C. 185. The imposition of the *New Orleans conditions,* in the *Erie case,* was affirmed as proper by the Supreme Court in *Maintenance of Way Employees* v. *United States,* 366 U. S. 169.

On brief, Labor argues that the only fair and equitable arrangement that would prevent the hardships which would follow the announced drastic reduction of the employment forces of Seaboard and Coast Line in the event the proposed merger is approved, would be to impose conditions requiring continued employment of all employees after consummation of the merger. Such conditions would place full reliance upon the operation of natural attrition as the means of achieving future job reductions by the merged company. Labor suggests adoption of "attrition conditions," in the form specified in the conditions A, B, and C, hereinabove. Arguments in favor of such conditions refer to

[117]

(1) the applicants each are financially strong and show no need for the merger, (2) the estimated annual savings of $38,000,000 include reduction in the cost of employment to the extent of 74 percent, or $29,000,000, and places an unreasonable burden upon labor, (3) fewer employees would be forced to move their residences, and (4) considerably less bumping by exercise of seniority rights would occur. *St. Paul Bridge & Term. Ry. Co. Control,* 199 I.C.C. 588 (596-7), is cited as prescribing labor conditions similar in type to the aforementioned conditions.

Labor proposes that the protection afforded to affected employees of Seaboard and Coast Line, also cover employees of other railroads which would be obliged to decrease their employment forces because of the loss of traffic and revenues which the merged company would divert. Cited specifically, are estimates by officials of Florida East Coast Railway that some 730 employees would be subject to displacement or separation, if as anticipated by East Coast, approximately 23 percent of its total freight and passenger revenues are lost. Labor asserts that the East Coast employees are "railroad employees affected," even though they are not employees of an applicant or a carrier-party to the transaction under consideration.

Brotherhood of Railroad Trainmen v. *Baltimore & Ohio R. Co.*, 331 U. S. 519, is cited as construing the phrase "affecting such employees" contained in section 17(11), to mean the same as "prejudicing such employees." Labor contends that the same interpretation applies to the similar language in regard to the interests of employees, contained in sections 5(2)(c), and 5(2)(f). In view of such arguments, Labor submits that the basic test involved relates solely to whether the employees claiming protection are "affected" or "injured" by the transaction, without regard to the legal relationship of the employing carrier to the proceeding under consideration. Leading decisions of the Commission and the courts are discussed as supporting the foregoing proposition, and showing that the Commission does not have an unbroken line of precedent in interpreting section 5(2)(f) as limited only to employees of an applicant or a carrier involved in a transaction. Cited as of importance in settling this issue, are views recently expressed by the Commission as to the scope of section 5(2)(f), in its brief to the Supreme Court filed in *Brotherhood of Maintenance of Way Employees* v. *United States, supra*, in defense of the order prescribing labor protective conditions in *Erie R. Co. Merger, supra*. Labor summarizes the

Commission's position as requiring that those who are economically injured in consequence of a section 5 transaction should receive a "full measure of compensatory benefits for the statutory period."

The brief discusses the *New Orleans conditions*, and argues that such would not be appropriate in the circumstances herein because they fail to protect all the incidents of employment, including so-called "fringe benefits" generally. In support, Labor asserts that section 5(2)(c) requires the Commission to consider the interests of employees in finding that the proposed

[118]

merger is consistent with the public interest; and subparagraph (f), requires imposition of "a fair and equitable arrangement" to provide that the employees of carriers by railroad affected shall not be in "a worse position with respect to their employment" for not less than up to 4 years following the date of the Commission's approval. Labor, thus interprets the statute as requiring a determination of the type of conditions that best would suit the affected employees in terms of protection to the stability of the labor supply, and to the individual employee's investment in seniority and attainment of skills in railroad employment. The *New Orleans conditions* also are faulted for providing two methods of arbitration in regard to contested claims of employees that they are adversely affected by transactions approved by the Commission. Presently, such matters may be placed before a special board provided in the *Oklahoma conditions* (condition 8), or, before a permanent committee provided in the *Washington Job Agreement*, (section 13). Under either method, the railroads heretofore have prevailed in their position that the employees must satisfy the burden of proving the contention, even though all the evidence to establish its validity is in the railroads' possession. Labor requests imposition of proposed Condition

No. 7, shown hereinabove, which would shift the burden of proof to the railroad after the employee has presented a *prima facie* case.

Labor further argues that the application herein should be denied on the merits, because the applicants failed to prove that authorization of the proposed transaction would be consistent with the public interest within the meaning of section 5(2), and failed to satisfy the standard of a "clear and strong public gain" as spelled out in *Wheeling & L. E. Ry. Co. Control,* 254 I.C.C. 505 (510) and cases cited therein. Many pages are devoted to the analysis of evidence purporting to prove (A) that neither Seaboard nor Coast Line are weak carriers financially who would be saved by consummation of the merger, (B) that neither applicant presently is in jeopardy of financial failure or instability because of declining revenues and rising costs, and (C) that the annual savings of $38,000,000 contemplated as realizable after the fifth year of merged operation should be regarded as speculative on grounds that the applicants are not firmly committed to adopt all the suggested coordinations, eliminations of train service, and abandonments of lines upon which the estimated savings are premised; and that the supporting studies regarding expected savings by the consultant Wyer are not worthy of credence for the reason that in a brief filed March 25, 1957, in *Florida East Coast Ry. Co. Reorganization, supra* Coast Line contemptuously denounced and rejected studies prepared by Wyer for the account of the holder of a majority of the debtor's Refunding Mortgage Bonds; while, in the proceeding at hand, the applicants accept as entirely proper, results of studies which Labor alleges are founded upon the same bases and theories as those in the earlier case.

In a separate section of the brief, Labor contends that instead of any prospective public gain, the proposed merger would produce positive injury to the public, shown by evidence

that the proposed consolidation of operations (A) would divert traffic from, or otherwise do damage to at least five other railroads,

[119]

(B) would cause irreparable adverse effects to numerous railroad employees and their families, variously estimated between 32,000 and 100,000 persons, by the wage earner being required to change the location of his employment; and, whose moving would cause extreme economic disturbances to communities in which such employees resided for many years and have been respected citizens and homeowners, and (C) would result in the elimination of present competition by Seaboard and Coast Line against one another, with no offsetting benefits to the public, and in that sense, fails to conform with antitrust law requirements discussed by the Supreme Court in *McLean Trucking Company* v. *United States*, 321 U. S. 67 (86-87).

In rebutting Labor's contentions, the applicants present calculations showing that employee protection under the attrition conditions, construed to permit employees to refuse to move from the area of their present employment and yet retain the benefits of the conditions, would require 35 years to reduce the combined forces of Seaboard and Coast Line to the size required for the merged company's efficient operations. Using 1957 data which underlies the applicants' initial wage studies, the cost in wages to employees not necessary following consummation of the merger, is estimated to be in excess of $149,000,000 to which would be added $12,000,000 payroll taxes, and adjusting the total thereof to reflect costs as of January 1, 1960, the potential cost would be $170,874,000. However, should the merged company have complete freedom to transfer employees as suitable vacancies occur at other points on the system, relatively small costs would be incurred. Assuming further, that the merged company would be able

to transfer any eligible and qualified employee to fill vacancies created by attrition, even outside seniority districts and across craft lines, (so long as no qualified person with greater seniority on the affected roster were available to fill the vacancy) the applicants believe that the total cost, including moving expenses, might be less than the cost of providing consolidation allowances in combination with the other forms of protection arising from the *Washington Job Agreement conditions*, which the applicants' initial studies contemplated would be imposed.

In view of Labor's position throughout the hearing, and in anticipation of arguments thereon, the applicants on brief, rely primarily upon the argument that protective conditions, such as the Commission has prescribed in recent merger authorizations, offer adversely affected employees substantial protection, the like of which no other industry in the United States, by law, is required to underwrite. The applicants assert that protective conditions which have developed from the *Washington Job Agreement*, assure affected employees that their individual interests would not be worsened in respect to compensation and rules governing working conditions; and that during the priod of protection, the affected employees continue to receive the advantages of the same fringe benefits to which active employees are entitled.

[120]

The applicants oppose the suggested attrition conditions as being tantamount to a "job freeze", such as the Supreme Court in the review of the *Erie R. Co. Merger* case, *supra*, held is not required under the provisions of section 5(2), and would conflict with the provisionss of the National Transportation Policy which direct the Commission to promote economical and efficient service,and to foster sound conditions in the transportation industry. In the applicants' view, an opposite result would be achieved, if a merger is approved,

but the merged company is not permitted to eliminate duplicative operations, services, facilities, and general costs that otherwise could be eliminated upon consummation of the merger. The applicants also assert that to accept Labor's suggestion would cause indeterminate postponements and outright loss of most of the benefits contemplated by the merger proposed herein.

Effect upon railroad competition. Many aspects of the effect which the proposed merger would have upon competition amongst railroads and by railroads with other forms of transportation are reviewed throughout the preceding portions of this report. As shown, much of the evidence and contentions by the applicants and by shipper and public interests favoring their position are contradicted in varying degrees by the evidence and views expressed by intervening railroads and by industries and communities which support their views. The brief of the United States Department of Justice (Justice) accepts as clearly proved by interveners herein, that the only benefits from the proposed merger and the elimination of competition between the affected railroads would be to assure increased revenues to the applicants; that both applicants are financially strong; that during 1950-59 inclusive, each enjoyed favorable annual net income and earnings per share of capital stock and paid satisfactory dividends; that the applicants and the systems of which they are part compete vigorously; and that such competition has contributed to the growth of the Southeast and has resulted in improved railroad service and industrial development and production. Justice summarizes evidence showing that the proposed merger would completely eliminate the existing railroad competition in the central and southwestern portions of Florida, and that shippers interested in such areas would face substantial increases in their cost of operations and would face poorer service despite higher transportation charges. In similar manner, Justice contends that industries at points outside Florida would also be disadvan-

taged in their ability to compete with domestic and foreign interests whose transportation service would not be affected. Conceding that some industries which are served directly by the merged company would enjoy lower rates and improved service, Justice is concerned that the competitive situation within the commercial industries in question would be disrupted and competitors not in position to utilize the merged company's improved service would be injured.

Justice relies upon its findings that the Central of Georgia Railway Company, the Georgia Railroad, and the Georgia & Florida Railroad each would lose considerable traffic and revenues to the merged company to the extent that traffic now interchanged by

[121]

Seaboard and Coast Line with the aforesaid shortline railroads would be handled solely by the merged company in the future; that the loss of the traffic of the short lines and the decrease in their revenues would become more drastic in the future; that ultimately the affected carriers would be required to discontinue service in part, or to abandon their entire operations; and that in turn, the industries and communities in the areas where railroad service would deteriorate would be affected adversely.

Justice also presents its belief that consummation of the merger unavoidably would end the assistance and friendly solicitation presently provided by Coast Line in the securing of traffic for movement via through routes involving the Florida East Coast Railway. This assumes that the merged company would substitute the present connecting routes of Coast Line and Seaboard to and from points and areas also served by East Coast, and that the latter's small sales organization would be unable to attract traffic in competition with the combined solicitation force of the merged company. On such

bases, Justice is convinced that the loss of traffic and revenues in the handling of southbound manufactured and miscellaneous traffic beyond Jacksonville would impair East Coast's ability to originate shipments of agricultural products moving northbound, and that eventually the ability of East Coast to continue operations as a Class I railroad would be jeopardized. Justice joins the request of the Department of Defense that the availability of adequate railroad service to and from Cape Canaveral and Patrick Air Force Base be assured as a means of preventing any adverse effect upon the interests of national defense.

Relying upon the evidence cited in its brief, Justice argues that the proposed merger would flagrantly contravene the policy of the antitrust laws, and should be denied immunization from the prohibitions of the Sherman Act (15 U.S.C. 1), and section 7 of the Clayton Act (15 U.S.C. 18), *McLean Trucking Company* v. *United States*, 321 U.S. 67 (80, 86-7), is cited as requiring the Commission to consider the antitrust laws, and *United States* v. *Union Pacific Railroad Company*, 226 U. S. 61 (85, 87-8), is cited as including antitrust violations as a basis for denial of relief under section 5 of the Interstate Commerce Act. Also cited, is *United States* v. *DuPont & Company*, 353 U. S. 586 (590-1), regarding acquisitions which may substantially lessen competition between two corporations, restrain such commerce in any section or community, or, tend to create a monopoly of any line of commerce.

Justice is of the opinion that the merger as proposed would not satisfy the requirements of section 5(2) and the provisions of the National Transportation Policy, because it would fail to promote the recognized objective of assuring adequate transportation service; would impair transportation service within the Southeast; would not achieve or maintain an adequate transportation system; and would deny the advantages of competitive service necessary to provide adequate railroad service

to affected shippers and communities. The applicants' failure to announce positive commitments to implement the recommendations of the engineer consultants regarding abandonment of lines and curtailment of various present services, is criticized, and Justice charges that the plan presented by the applicants is speculative and offers no reliable basis for measuring the financial benefits which the applicants would achieve.

[122]

PRIMARY FINDINGS

Throughout the report herein are recited numerous facts drawn from the evidence of parties supporting the proposed merger and related transactions, and evidence on behalf of interveners opposed to approval of the applications. As shown in the record, those portions of the consultants' reports and recommendations pertaining to the mechanics of achieving physical consolidation of the applicants' facilities and operations are not subject to serious contest by the interveners. A clear impression prevails that many of the judgment decisions relating to the economic effect of the propositions which the applicants advocate could be subject to other equally tenable theories. On review, it appears that the interveners have failed to establish any inherent deficiencies in the validity of the general principles upon which are based the various estimates of future operating results.

Consideration of the entire body of evidence justifies numerous primary findings of fact bearing directly upon the major issues to be resolved, among the most significant of which, are the following:

1. The physical lines, operating routes, and freight and passenger services of Seaboard Air Line Railroad Company and the Atlantic Coast Line Railroad Company are substantially similar; both serve many points in common including

practically all the major terminals of each; and they compete generally for traffic involving the same types of freight and passenger business within the territories served directly, and to and from the same off-line areas and markets.

2. Recent annual accounting statements of Seaboard and Coast Line reflect overall conditions which indicate that within the foreseeable future, neither is threatened by serious financial distress or insolvency.

3. The terms and conditions of the plan of merger of the applicants' properties and franchises have been properly approved and recommended by directors of the applicants' companies, and adopted by overwhelming majorities of the outstanding shares of voting stock of Seaboard and Coast Line, respectively.

4. Atlantic Coast Line Company, an investment company, which controls Coast Line through ownership of 35.4 percent of its capital stock, was created in 1889 by the founders of several railroad companies which formed the nucleus of the Coast Line system, and is considered to be a carrier subject to certain provisions of the Interstate Commerce Act.

5. Mercantile-Safe Deposit and Trust Company, a banking and trust company, in various fiduciary capacities and otherwise directly and indirectly holds interests representing approximately 56 percent of the capital stock of ACL company, and small interests in the stock of Coast Line and Seaboard.

[123]

6. Following conversion of the stock of Coast Line, upon consummation of the proposed merger, ACL company would own approximately 15.2 percent of the capital stock of the merged company, and Mercantile's total stock interests through ACL company and otherwise would be equivalent to approximately 17.9 percent of the outstanding stock of the merged company.

7. The application proposing merger of Seaboard and Coast Line, and the evidence presented in proof of the public interest involved are confined primarily to disclosure and review of pertinent railroad financial and operating records, statistical data and studies, and other material relating to each applicant, on the basis of which two consultant engineering firms conducted extensive independent studies of potential economic benefits from consolidation of the properties and operations of the applicants.

8. The conclusions of the consultants, adopted by the applicants as the basis for negotiating the terms and conditions of the plan and agreement of merger, and to show the financial advantages which the applicants anticipate would be shared, predict annual savings at and after the end of the fifth year following consummation of the transaction (based upon 1960 levels of revenues and expenses), in excess of $38,700,000 before Federal income taxes.

9. Operations by the merged company of the properties of Seaboard and Coast Line would permit savings achieved by (1) consolidation of stations, terminal facilities, general offices, departments, operating divisions, and other properties separately maintained and operated by the applicants; (2) elimination of duplicate lines by means of relocation of tracks and related facilities, construction of new connecting tracks and abandonments of lines and segments; (3) use of shorter or more economical routes; (4) pooling of cars, locomotives, work equipment and repair facilities; and (5) combining of duplicative freight train and passenger train operations and service.

10. The applicants reserve for the merged company the decision whether any of the 48 separate portions of the lines of Seaboard and Coast Line, together aggregating more than 1,000 miles, which the consultants recommend for abandonment, should be continued in operation, if under merged con-

ditions, it appears that existing or future needs of affected shippers would be better served by refraining from seeking permission to abandon.

11. The merged company would handle freight traffic over portions of the existing routes of Seaboard and Coast Line in a manner permitting, among other benefits, use of lines having the most favorable physical characteristics; discontinuance of lines having the least advantages; and establishment of primary freight routes involving distances in some instances, up to about 250 miles shorter than Coast Line's direct routes; and as to other routes, up to about 400 miles shorter than Seaboard's routes between the same principal terminal points.

[124]

12. The separate regularly scheduled freight trains of Seaboard and Coast Line would be consolidated by the merged company to permit operation of fewer through trains with heavier loads, under efficient, expedited schedules.

13. Separate passenger trains presently departing terminals of Seaboard and Coast Line at approximately the same time of day would be rescheduled to provide more frequent and convenient service, and thus achieve increased ratios of occupied capacity to total available capacity.

14. The applicants estimate that other railroads including several presently affiliated with Coast Line's system would lose about $6,600,000 freight revenue annually, due to changed patterns of traffic involving route modifications contemplated by the merged company in the stead of present routes in which Seaboard and Coast Line participate in joint-line movements; and that after deducting the added expenses of handling such diverted traffic, the potential total additional income of the merged company before Federal income taxes would be approximately $4,560,000 annually.

15. Traffic which presently does not move over portions of the lines of Seaboard or Coast Line as a part of a through movement, also might be diverted from other railroads to the benefit of the merged company; but, the amount of such increment has not been estimated by the applicants.

16. Following consummation of the merger and institution of the prospective changes in routes and operations, the exercise of unrestricted efforts on the part of the merged company to divert from other railroads the maximum amount of traffic and revenues possible—by canceling, restricting, or otherwise modifying existing routes, gateways, and channels of trade, or, by disregarding good business principles and taking unilateral actions that would disturb continuance of amicable relations with other railroad companies—would result in up to $14,250,000 gross revenues annually more than the applicants estimate would accrue as a result of the merger.

17. Relying primarily upon the applicants' representations, numerous users of the applicants' freight services support the proposed merger and the anticipated changes in service and operations which the applicants made of record, and which in the belief of the witnesses, would result in improved equipment supply and general service, and in lower total transportation costs; and similarly, representatives of communities and various local governments, and civic organizations which function to promote trade and industrial development, endorse the application and proposals herein as beneficial to industry and the welfare of the affected areas and the citizens therof.

18. The principal direct and indirect advantages foreseen by the shipping public which favors the proposed merger of the applicants, are the following:

[125]

(a) Reduction in the time consumed and tariff charges to shippers related to switching and other services at, from,

and to terminal facilities which would not be required by the merged company;

(b) Establishment of new routes involving reduced mileage and savings in time elapsed in transit;

(c) Reduction in applicable rates at undetermined future dates because of the effect of the accumulated savings to be realized by the merged company;

(d) Increase of the availability of equipment by combining the supply of the applicants' separately owned and operated wood rack cars and other special types of cars required by industries;

(e) Assurance of faster turn-around of regular and special car equipment;

(f) Greater flexibility of available routes;

(g) Availability of broader transit privileges at important terminals and points of interchange;

(h) Simplified tracing by railroads, at the shippers' request, of cars during movement over lines of the merged company;

(i) Easier accounting and balancing of car-demurrage and other regular and special charges and allowances on equipment;

(j) More convenience in the filing and processing of claims for damage to lading; and

(k) Increased ability to negotiate with fewer separate railroad managements for the institution of proposals for new or modified rates, routes, and services.

19. In view of the expected improvements in service and potential savings in costs, affected shippers would be able to decrease their present utilization of modes of transportation other than railroads; and correspondingly, would be in position to redivert considerable of the traffic heretofore lost by the railroads as competitive rates and services of highway carriers and water lines presented greater advantages to the shippers.

20. Coast Line has financial control of Louisville & Nashville Railroad Company by virtue of ownership of about 33 percent of its capital stock, and obviously has the power to exercise control in other respects, but, during the 60 years of ownership of as much as 51 percent of the stock by Coast Line, it never has controlled the operations or traffic policies of L-and-N; and the applicants stipulate that the existing traffic and operating relationships with L-and-N would continue to be adhered to by the merged company.

[126]

21. Florida East Coast Railway Company connects with Seaboard, Coast Line, and Southern Railway at Jacksonville, and by interchange with Coast Line participates in through routes and joint rates to and from West Palm Beach and points south therof, and provides service competitive to that over Seaboard's direct route.

22. About 85 percent of East Coast's originating traffic delivered to connecting railroads for movement beyond Florida points (up to 18 percent of its annual total revenue on such traffic), consists of perishable fresh fruits and vegetables requiring refrigerated cars which move empty to the points of loading; and about 50 percent of its terminating traffic (up to 52 percent of the total revenue carload traffic) received from connecting railroads consists of high-revenue manufactures and miscellaneous articles moving in box cars and other equipment which is returned empty to the owing railroad.

23. East Coast fears that operations of Seaboard and Coast Line as a merged company and the elimination of connecting traffic received from either in competition with service provided by the other, would cause annual losses to East Coast equivalent to more than $548,000 on traffic interchanged with Coast Line for delivery at and south of West Palm Beach, plus $1,860,000 revenues accruing to East Coast for delivery to the

same area, of interchange traffic received from Coast Line's subsidiary and solely and jointly leased railroads, and from Seaboard and its affiliated companies to the same area.

24. East Coast is apprehensive that its ability to continue satisfactory common carrier service would decline before the end of the fifth year of merged operations, to the point that potentially, the entire annual revenues on interchange traffic to and from West Palm Beach and points south, might be rerouted over the merged company's line (Seaboard's present line) for delivery to the aforesaid points.

25. Shippers and receivers of freight having facilities situated along the lines of East Coast and relying primarily upon it for railroad service; and community, civic, and trade-promotion organizations at points within the area tributary to East Coast, request that the *status quo* remain unchanged; that East Coast be protected from the potential loss of traffic and revenue which would injure its financial position and hamper its ability to continue freight and passenger operations; and reduce the capacity to continue to employ the forces now dispersed over East Coast's system and contributing largely to the economic and general welfare of many of the points and terminals in question.

26. The United States Department of Defense is concerned about any possible adverse effect upon the national defense, in the event East Coast becomes unable to continue adequate

[127]

service at points about 175 miles south of Jacksonville, in conjunction with which a 15-mile movement by highway provides the most direct railroad transportation to and from several important military installations at and near Cape Canaveral.

27. Southern Railway System Lines, operating 8,156 miles of line, is concerned particularly that the merged lines of

Seaboard and Coast Line, in combination with those of L-and-N, (which together would operate an aggregate of 15,930 miles of line) by utilization of existing and proposed new routes most favorable to the merged company and L-and-N, would cause serious diversions of traffic and loss of revenue to Southern in addition to the total effect conceded by the applicants.

28. The routes of Southern, except within Florida, generally are parallel to and cross the lines of the applicants; and, with the exception of points south of Jacksonville, Southern serves practically every important point on the lines of Seaboard, Coast Line, and L-and-N.

29. Under long-term trackage agreements, Southern operates through trains and engines over a line of Coast Line between Hardeeville and a point near Savannah (19.9 miles), and between the latter point and Jacksonville via Jesup and Folkston (153.6 miles), which route is a component of Southern's shortest routes between Jacksonville and eastern points north thereof; and with certain exceptions is subject to restrictions against the routing of most Florida taffic via Southern, north of Jacksonville.

30. Shippers and receivers of freight, and communities and civic groups which would benefit from Southern's service in direct competition with the combined facilties and service that would exist after consummation of the merger herein, favor Southern's proposed extensions of lines; and in consonance with Southern's testimony, express vigorous opposition to the creation of a monopoly of railroad service within the areas to, from, and through which their traffic moves.

31. Those who support Southern's proposals seek assurance that the elimination of competition between Seaboard and Coast Line for available transportation business would not result in the loss of affected shippers' existing ability to choose

the carrier with whom to do business; to continue to control the routing of their respective traffic; and to instigate with separate railroads which serve them, requests for improved service, more adequate and constant supply of cars, and publication of favorable new or modified rate structures.

32. Paper manufacturers with major producing and shipping facilities served by one or more lines of Seaboard and Coast Line, and by Southern and other railroads, among other things, fear that abandonment of lines by the merged company would reduce the availability of single-line service now used, and thus add to the mileage involved in the movement of bulk commodities inbound; and that certain of their plants would be at a rate disadvantage compared to competing paper producers to and from whose plants increased single-line routes and lower rates would become applicable after merger of Seaboard and Coast Line.

[128]

33. Central of Georgia Railway Company presently participates separately and jointly with Seaboard and Coast Line, largely as an intermediate carrier, in through routes and joint rates involving traffic principally via Columbus, Macon, Albany, and Savannah; and fears that such traffic would be lost should the merged company establish new direct routes embracing combinations of portions of the lines of each applicant.

34. Central estimates annual losses in excess of $3,000,000 gross revenues in the event the traffic presently interchanged by Seaboard and Coast Line is entirely diverted from Central's lines, or, is routed for movements involving shorter distances over Central's lines in effecting connection between the merged company's points of interchange and the terminals where other railroads receive or forward the interline traffic.

35. Savannah & Atlanta Railway Company, wholly owned subsidiary of Central, anticipates potential revenue losses of

about $441,000 annually due to diversion of overhead traffic interchanged directly with Coast Line and Seaboard, and foresees that the projected diversion by the merged company of approximately 20 percent of the annual revenues of the Georgia Railroad, with which the Savannah connects, inevitably would cause deterioration of the Georgia's operation and lessening of service to the point that the overhead traffic would be lost to the Georgia and to the Savannah.

36. Users of railroad service located at points reached solely by Central, or by Central and other railroads, in their own interests, seek to protect Central from the diversion of traffic which the applicants concede would occur; to assure that Central's financial stability would not be impaired and its operations and service not suffer disruptions and ultimate discontinuance; and to continue the present ability of Central to compete with other railroads.

37. In the interest of the Georgia Railroad, which is not an intervener on its own behalf, the public service regulatory agencies of Georgia and Alabama, and shippers and civic groups interested in the service provided by the Georgia directly or through connecting railroads, each is concerned that the almost 20 percent loss of revenues which the applicants estimate, would lead to deterioration of the Georgia's ability to continue adequate service and its inevitable demise upon expiration of the lease to Coast Line and L-and-N, which expires in 1980.

38. Gulf, Mobile & Ohio Railroad Company, operating between points on the Gulf of Mexico and Chicago, St. Louis, and Kansas City, with lines reaching Birmingham, Montgomery, and other terminals served by the applicants and L-and-N, fears that the proposed merger would adversely affect existing traffic patterns and general operations of railroads which directly serve or connect with the lines of the applicants and other railroads in the Southeast, particularly because Sea-

board and Coast Line no longer would compete with each other, and the merged company would be substituted for Coast Line in the control of L-and-N.

39. Illinois Central Railroad Company competes with L-and-N east of the Mississippi River, participates directly or indirectly

[129]

with it in through movements in competition with both applicants, and generally enjoys greater effective cooperation with Seaboard than with Coast Line, ostensibly because Coast Line favors routing via the available routes of its affiliate, L-and-N.

40. Illinois Central's proposal to acquire control of L-and-N by requiring Coast Line to divest the stock of L-and-N to Illinois Central is objected to by Chicago & Eastern Illinois Railroad Company and the Monon Railroad, interveners which connect with Illinois Central and L-and-N at various gateways, on the basis that such common control would deprive the connecting short-lines of substantial volumes of bridge traffic, and be responsible for the eventual change in the character of service of Eastern Illinois and Monon from line-haul carriers to switching carriers.

41. Norfolk Southern Railway Company, whose participation in through routes with Coast Line presently is restricted because certain of the latter's routes are closed to movement via Norfolk Southern, fears loss of considerable of its present interline traffic because approval of the merger would eliminate the existing competition between Coast Line and Seaboard, and end the separate cooperation of each with Norfolk Southern in competition with the other's routes.

42. Norfolk Southern fears that continuation by the merged company of Coast Line's present policies in respect of publication of routes closed to participation by Norfolk

Southern, and the resulting impossibility of soliciting interline traffic between, to, and from points served by the merged company and also served by Norfolk Southern directly and with connections, would prevent its securing new traffic and revenues to offset the diversion of Norfolk Southern traffic which the applicants concede the merged company would accomplish.

43. The stock exchange ratio agreed as part of the plan of merger was arrived at by negotiation between the managements of Seaboard and Coast Line, based upon analyses of records and data pertaining to past economic, finanical, and operating conditions; details of numerous studies and projections of improved efficiencies, operating savings, and earning power of the merged comapny compared to the related combined totals of the applicants.

44. The exchange ratio, premised upon Seaboard's stock being the measure of value of the stock of the merged company on a share-for-share basis, gives consideration to appropriate statistical and accounting adjustments of reported earnings and net income applied to equalize discovered differences in accounting and tax procedures, and past and current abnormal circumstances or modifications involving the operations or financial position of one or the other of the applicants during the periods covered by the studies.

45. After conversion of Coast Line's stock as contemplated in the stock exchange ratio, the present stockholders of Seaboard would have 56.44 percent of the merged company's outstanding shares (8,565,503 shares), and Coast Line's stockholders would receive 43.56 percent of the total.

[130]

46. Consolidation of the merged company's facilities and services, within 5 years after statutory consummation of the merger, would cause the abolishment of approximately 4,257

positions held by employees of the applicants, and would require 4,439 other employees to change their present job locations in order to retain their individually accumulated seniority and other employment rights.

47. Following the 5-year period required to implement the proposals involved in the proposed merger, the adverse effect upon the merged company's employees would account for savings of more than $25,500,000 annually, represented by decreased costs of wage and employee-benefit costs, plus about $3,100,000 savings in related payroll taxes.

48. During the period of consummation of the merger and completion of the planned changes in operations, job openings occurring throughout the merged company's system by virtue of deaths, retirements, dismissals, resignations, and other normal attrition in employee forces which the applicants estimate would average about 1,134 openings annually, or 5,670 during the first 5 years after merger, would be filled so far as practicable, by eligible employees displaced or otherwise disturbed as a result of the merger transaction.

49. Employees of each railroad, generally organized as to separate crafts and classifications of work performed, are members of national unions having local groups with jurisdiction extending to entire railroad systems, operating divisions, geographic areas, shop or office facilities or activities, or, combinations of more than one specific work interest; the representatives of which, by collective bargaining procedures, negotiate individual working agreements which describe in detail the terms of employment and the contractual rights and obligations of the employer and the employee.

50. With many variations applicable to particular agreements, the loss of each job assignment might cause multiple displacements of employees on the same roster, and the changing of the positions of several employees until the chain process

reaches down to the employee most recently assigned to a regular position, who becomes furloughed with prospects of being recalled when conditions warrant, or is permanently dismissed from railroad service.

51. Because railway labor forces have been reduced by management in recent years as a principal means of achieving lower operating costs, a high ratio of unemployment exists amongst railroad trained personnel,

[131]

particularly those with special skills adapted solely for railroad oriented jobs; and, to a large extent, furloughed employees with relatively high seniority rights are required to wait long periods before being recalled to regular assigned positions.

52. The economies and the welfare of communities and areas, in which reside groups of the applicants' employees who lose jobs because of operating changes resulting from the merger transactions, or, who elect to remove their families to other areas where positions with the merged company are available, would be disrupted and require business and social adjustments.

53. The proposed merger would result in elimination of present competition between Seaboard and Coast Line, for the reason that the merged company would be in position to provide single-line service over combinations of portions of the applicants' present lines in substitution for competitive operations and service heretofor provided by each applicant via its separate routes as independent railroads.

54. To the extent the merged company would have the power to exercise control by publication of new routes and by soliciting shippers to make use thereof; the merged operations would eliminate the voluntary separate cooperation, by Seaboard with its connecting railroads and by Coast Line with

its connections, in the handling of traffic over through routes which are competitive with routes involving interchange between the applicants without participation by foreign intermediate railroads, which heretofore have been considered not practicable from the point of view of Seaboard or Coast Line as independent railroads.

55. Subject to conditions such as are specified hereinafter under the heading "Recommendations", the transaction herein considered (1) would not adversely affect adequate transportation service to the public; (2) within the public interest, would include other railroads in the territory involved, if requests for approval of such inclusion in the transaction herein, are filed within the period jurisdiction would be retained for that purpose; (3) would not result in an increase in total fixed charges; and (4) would provide fair and reasonable protection of the interests of the carrier employees affected.

DISCUSSION AND CONCLUSIONS

Approval and authorization of railroad unifications, including proposed mergers of properties and franchises and related acquisitions of control and operation of carriers or portions thereof, are subject to the provisions

[132]

of paragraph (2) and subparagraphs of section 5 of the act. The ultimate determination to be made by the Commission is that, subject to such terms and conditions and modifications which it may find to be just and reasonable, the transactions proposed by the applicants would be consistent with the public interest. The statute requires the Commission to give consideration to certain primary elements affecting the public interest, as follows: (1) The effect of the proposed transaction upon adequate transportation service to the public; (2) the effect upon the public in-

terest of the inclusion, or failure to include, other railroads in the territory involved in the proposed transaction; (3) the total fixed charges resulting from the proposed transaction; and (4) the interest of the carrier employees affected. In administering these provisions, the Commission must be guided by considerations for adequacy of transportation service, essential conditions of economy and efficiency, and appropriate provision and best use of transportation facilities. *New York Central Securities Corp.* v. *United States*, 287 U. S. 12 (25), *McLean Trucking Co.* v. *United States*, 321 U. S. 67 (82).

In determining whether a proposed transaction is consistent with the public interest, consideration must be given to the public directly affected by the proposed changes in transportation service, and the effect upon every segment of the total public. Where a part of the public would benefit by the proposed transaction and other parts would be injured, the question is whether the benefits outweigh the injuries. Where the evidence as to the alleged benefits and injuries is conflicting, and neither the benefits nor the injuries are clearly established, the question is whether the probable benefits overbalance the probable injuries. *Chicago, B & Q. R. Co. Control*, 271 I.C.C. 63 (146). As in all determinations within the jurisdiction of the Commission, the ultimate decision must be compatible with the standards declared by the Congress to be the National Transportation Policy, enacted September 18, 1940, as the preamble of the Interstate Commerce Act, as amended.

The numerous elements of fact and contentions of the parties in favor of and in opposition to the merger transactions herein, and the primary findings distilled from the mass of such material presents satisfactory justification for certain conclusions without the necessity for further discussion or documentation. For example, in light of the several conditions and other limitations which should be prescribed to protect various

interveners and the interests of others who might be jeopardized, the terms of the merger plan are just and reasonable. Notwithstanding the position of interveners alleging that the proposed ratio for the

[133]

exchange of capital stock is unfair to the present holders of stock of Seaboard, and likewise mistreats the owners of Coast Line capital stock, the examiner is convinced that the ratio was properly reached by arms-length negotiation and is supported by adequate evidence of record. The minority stockholders showed only that it is possible to select particular items for analysis apart from other important elements, and thereby create impressions of unwarranted distortion or complete disregard of the rights and equities of one or another of the affected groups of stockowners. More persuasive is the approval of the merger transaction by more than 88 percent of the outstanding capital stock of Seaboard, and more than 93 percent of the Coast Line stock. Further, it is notable that investors in the mortgage securities affected herein have agreed to and approved modification of effective indentures necessary to implement the proposed plan to merge.

Discussion likewise is not necessary to conclude that upon approval of the proposed merger which is the primary transaction under consideration, it would be consistent with the public interest and considerations of national transportation policy to approve and authorize Seaboard or the surviving corporation (1) to acquire (a) control of the railroad carriers presently subsidiary to or affiliated with Coast Line; (b) Coast Line's rights under effective leases, and trackage and joint-use agreements pertaining to described lines of other railroads; and (c) motor-carrier operating rights held by Coast Line; (2) to issue common stock pursuant to the plan of merger; and (3) assume the liabilities and obligations of Coast Line.

The reasons which underlie the examiner's conclusions and recommendations pertaining to various issues in controversy in the record are discussed hereinafter under separately identified topics. Numerous specific contentions by the applicants and by the interveners, not separately discussed herein, are embraced in related topics covering broader areas of consideration. Conclusions and requested findings contrary to those contained in this report have been carefully considered and found to be without material significance or not justified.

Supplemental application. Mercantile's request for authority under section 5(2), to acquire indirect control of the merged company through its fiduciary and direct ownership of capital stock of Coast Line, ACL company, and Seaboard, is accompanied by Mercantile's challenge of the Commission's jurisdiction to grant the application, or, to consider Mercantile as a carrier subject to section 5(3). Any power to control the merged company with which Mercantile would become vested as a consequence of the proposed merger, necessarily

[134]

would emanate from its present ownership of stock of the constituent companies. The effect of the conversion of Coast Line stock for that of the merged company would be the factor primarily determinative of Mercantile's power to control the merged company. The percentage of ownership of stock of Coast Line by the parent company, after operation of the stock exchange, would reflect itself in the ownership of about 15.2 percent of the stock of the merged company, which is less than half of the present total percent of ownership of the capital stock of the Coast Line. Thus, the direct power of ACL company, through whose interests Mercantile would claim any power to control the merged company, would be diluted; and combined with the other stock ownership interests of Mercantile, would total less than 18 percent of the voting power of the merged company. It is obvious therefore, that Mercantile

would acquire neither control, nor the power to exercise control of the merged company.

Further in this connection, the existing fiduciary holdings of Mercantile unavoidable would be reduced upon the occurrence of future events described in the attendant trusteeship agreements. At such times, which may begin at a relatively early date, the stock of ACL company and the merged company would be surrendered to the beneficial owners, and Mercantile's voting strength would decrease proportionately. As shown, the proposed merger and related transactions would not increase or otherwise extend the power of Mercantile to exercise control over the merged company. In the absence of any other special circumstances that would warrant a contrary finding, there is no valid reason to hold that Mercantile, which presently is not authorized to control any railroad despite its past ownership of stock of ACL company and Coast Line, is a necessary party to the proceeding herein. The supplemental application should be dismissed. The rationale in this instance is consistent with the tests prescribed by the Supreme Court as means of determining whether changes in inter-carrier relations constitute an acquisition of control within the meaning of section 5(2). See *Alleghany Corp.* v. *Breswick & Co.*, 353 U. S. 151 (169), and *Atlantic Coast Line R. Co. Merger*, 307 I.C.C. 614 (621).

Benefits. Many of the advantages achievable from the proposed merger of Seaboard and Coast Line would accrue to the persons especially interested in the ownership and operations of the merged company. Probably the most significant point of direct benefit developed in the record, pertains to the prospects of net savings and increased revenues of more than $38,000,000 per year compared to the difference between the combined revenues and operating expenses of Seaboard and Coast Line individually. While the sum mentioned is merely an estimate, it was arrived at by methods heretofore acceptable in merger

authorizations, and found to be reliable and generally predictive of operating and financial results

[135]

under conditions of merger. Although interveners herein intimated that the prediction as to financial benefits is unduly optimistic and should be lower; others, equally interested, take the position that the forecast of annual benefits to the merged company should be higher, because the applicants understate the amount of traffic and revenues that would be diverted from competing and connecting railroads despite the interveners' best efforts to prevent such loss of traffic to themselves.

The predicted financial benefit to the merged company is reasonably probable. In fact, the prediction offered may be conservative in view of the terms and conditions which the applicants envision, and the fact that unless appropriate restrictions are spelled out and observed, even greater diversions from other railroads might be developed. However, with the imposition of additional conditions which should be prescribed herein to afford greater protection to other affected railroads against the potential disruptive activities of the merged company, the net monetary benefit resulting from the proposed merger would be reduced. Even if the eventual savings should reach only $15,000,000 or $20,000,000 per year following complete effectuation of the merger, the transactions under consideration would be adequately justified as a means of improving the ability of the railroad industry to continue rendering necessary transportation service to the public.

Evaluation of the effect upon the public other than the individuals comprising the stockowners, management, and retained employees of Seaboard and Coast Line, is made in view of each applicant enjoying status as a successful operating railroad, not in any foreseeable danger of financial difficulty. Also coloring the extent of the benefits that would accrue, is the fact

that the proposed merger would eliminate the present competition between the applicants to, from, and between the points they both serve directly, and in conjunction with other railroads via through routes in which each applicant separately participates. The applicants operate extensively within the Southeast, which has experienced population, industrial, and general business growth and prosperity during the past decade, to a degree substantially higher than the nation as a whole. Despite their importance to the area in providing a considerable proportion of the transportation requirements, the rate of growth of Seaboard and Coast Line has been markedly less favorable than that of industries engaged in other facets of the general economy. The applicants individually have made continuous efforts to encourage and develop passenger and freight traffic for movement by railroad. Nevertheless, because of the physical geography of the territory involved, particularly of Florida, and because a high proportion of the industry

[136]

there is devoted to agricultural pursuits, the traffic and revenues of the applicants, commonly with other railroads, has been particularly amenable to serious inroads by regulated and exempt carriers by highway, water, and commercial airlines. Despite the evident economic stability, the recorded annual rate of return on investment and other measures of earnings and the applicants' ability to meet fixed costs and pay dividends have decreased, and are below the level of other vital industries which also seek to attract investment capital.

Prospective changes in operations and service which would contribute to accomplishing the financial benefit to the merged company, would be the consequence of improvements of the physical handling of traffic, and the providing of generally more efficient railroad service. Various advantages would inure directly to industrial, and other shippers and travelers having interests in certain localities and points

in areas served by the merged company or reached by interlining with other railroads. The proposed consolidation of the properties of the applicants under one management and ownership would permit economies produced by more efficient use of motive power and equipment; elimination of duplicate facilities; and savings in traffic and general expenses. The merged company would enjoy better control of operating costs and greater efficiency in meeting the competition of the other modes of transportation. Coordination of the applicants' separate duplicative facilities and operations, and elimination of unnecessary properties and services would permit better utilization of equipment and facilities; require lower capital expenditures for such requirements; and result in appreciable savings in annual carrying charges. Additionally, the merged company would be in a better position than the applicants as independent railroads, to seek more diversified traffic availability by instituting long range developmental programs to attract new industries to plant sites served by the merged company. Properties available for such development would include sites presently used for railroad operating facilities which would be released after consolidation of the duplicative facilities of Seaboard and Coast Line.

Injuries. Matters related to foreseeable disadvantages of the proposed merger of Seaboard and Coast Line to the users of railroad service include instances of adverse effect as a direct result of abandonments of lines and other changes in operations which the merged company would institute. Injuries also would befall the present employees of the applicants whose positions would be downgraded or terminated, and those employees of railroads other than the applicants who would be

[137]

similarly affected following the merger. Also, to the extent that unemployment of railroad personnel occurs in the same community or area, the net effect would be a cause of serious economic dis-

ruptions to the detriment of the local governments and populations. Other injuries, of importance because of their effect upon the benefits anticipated by the applicants, are predicated upon potential losses in traffic availablity and reduced gross revenues that would be suffered by other railroads which presently participate in the movement of through traffic over routes involving interchange with either or both the applicants.

The adverse results such other railroads experience would be in proportion to the amount of traffic and revenues lost because of diversion from their lines to routes of the merged company. Those of the other carriers whose loss of revenues would be of more than token importance, inevitably would be compelled to reduce operating costs, and in some instances, would find it necessary to discontinue part or all their service. Eventually, they might be forced to abandon portions of the affected lines and operations. Thus, because of the merger proposed herein, such other railroads would encounter new problems and difficulties, the severity of which would become more pronounced as the modifications of operations by the merged company become fully consummated. As to several of the railroad interveners herein, which are acknowledged to be weak carriers, of marginal finaficial stability, loss of the divertible traffic would result in early insolvency and loss of their general status as independent railroads. As such events occur, shippers and receivers of freight who rely upon the existing service of the applicants in conjunction with routing via lines of such other railroads, would be confronted with transportation service that would tend to become less adequate and more costly. In the same manner, any military and national defense facilities located on lines of adversely affected other railroads and dependent upon them to provide the principal transportation requirements of the bases, would suffer from deterioration of service indirectly caused by the prospective operations of the merged company.

The impact of the foregoing types of injuries and others that would flow from approval of the merger herein can be reduced in severity by adoption of appropriate conditions to be imposed as special requirements upon the merged company. In that connection, imposition herein of the so-called "standard conditions" to assure perpetuation of existing open routes and channels of trade would not provide adequate protection to the other railroads referred to hereinabove, and to the shippers, industries, and communities which depend upon the ability of such carriers to continue satisfactory operations.

[138]

Historically, the standard conditions have been prescribed by the Commission, and appear to have satisfactorily served their intended purpose of protecting affected connecting railroads in instances in which the applicants concerned could be described as follows: (1) Essentially complimentary to each other, as end-to-end connecting carriers, *Spokane International R. Co. Control*, 295 I.C.C. 425; (2) partially competitive, but, for many years corporately related through stock ownership and operated separately, *Louisville & N. R. Co. Merger*, 295 I.C.C. 457; and (3) complementary with a relatively small amount of duplicative side-by-side mileage, but, both applicants situated in dire financial position and in need of considerable strengthening, *Erie R. Co. Merger*, 312 I.C.C. 185.

In addition to the standard gateway conditions, other specific limitations should be adopted and prescribed in respect of the merged company's intercarrier relationships. As drafted, they would be particularly applicable for the reason that the applicants are financially strong, independent, side-by-side railroad carriers which are generally competitive with each other. The conditions, listed and discussed further hereinafter under a separate heading, would have the effect of limiting the extent of some of the direct benefits which the applicants anticipate would accrue to the merged company. Simultaneously, they

would provide safeguards which would visit less injuries to other railroads and the public generally. Under such conditional restrictions, the benefits which would follow consummation of the transactions herein would far outweigh and overbalance the accompanying injuries.

[139]

Abandonments. The consultants determined that 48 separate lines or portions of lines of Seaboard and Coast Line, aggregating more than 1,000 miles, could be abandoned by the merged company following commencement of operations under single management. Consolidation of the present lines of the applicants would involve inter-related programs including the proposed abandonments, which together would achieve improvements in the main lines to be used as primary operating routes. Selected portions of the existing lines would be combined to form the most practicable routes providing the greatest operating efficiency and economy of maintenance; reduce transit time between the major terminals; permit release of a number of locomotive units; produce greater availability of car equipment; and improve safety of operations by elimination of numerous highway and street crossings at grade. Because the aforesaid modifications would entail use of the more favorable of the presently existing duplicative lines between points served by the applicants, it would be feasible to expect abandonment of their less desirable parallel line or lines, in whole or in part.

Inextricably included as part of the bases for estimates of the effect of the proposed merger and modifications, are values associated directly with the abandonments recommended by the consultants. In fact, the effect of the abandonments are directly or indirectly included as part of almost every major aspect of the proposed savings, and few of the proposals could be fully operative unless the savings pertaining to the abandonment proposals are given consideration. However, even if no abandonments were contemplated or undertaken, the savings

related to elimination of duplicative freight and passenger train service; consolidation of offices, departments, operating divisions, off-line offices, less-than-carload handling facilities, and heavy repair facilities, and related reduction in material and supply inventories, together estimated in excess of $16,000,000, would be almost entirely savable; and considerable portions of the estimated savings and increased revenues related to other phases of consolidation and rerouting of traffic also would be realized.

The application filed does not request authority to abandon lines or portions of lines which no longer would be required by the merged company after consummation of the proposed merger and consolidation of the lines and routes of the applicants. The executives of Seaboard and Coast Line assert that after operations are commenced by the merged company, further consideration would be accorded to the practicability of deferring decisions as to whether to press for those abandonments, if any, in regard to which substantial public opposition might be engendered. In such circumstances, new surveys of conditions after the merger would be determinative of which of the lines in question could be retained without doing damage to the anticipated benefits of the merger, and applications to abandon certain lines would not be presented to the Commission. Of course, the maximum benefits foreseeable require the actual

[140]

abandonment and removal of the lines and segments recommended by the consultants. The savings anticipated by the abandonments to be proposed would be dependent upon the merger first being authorized and consummated; and simultaneously, achievement of the benefits to the participants in the merger depend upon at least a majority of the abandonments being applied for and permitted. In light of these reasons, the savings and other advantages which the

abandonments would make possible, properly should be credited to the general merger proposition.

Many of the interveners which object to the proposed merger on general grounds or in some limited aspect, separately contend that the failure to include within the corners of the merger application, appropriate requests for permission to abandon lines which the merged company would not require, constitutes a fatal defect in the principal application. The interveners also allege that the applicants' refusal to commit the merged company to undertake the consultants' recommendations in their entirety, renders it impossible to evaluate the estimated benefits of the proposed merger other than on unsupported speculative basis. Thus, they conclude that the applicants have failed to sustain the burden of proof in the merger proceedings. There is evidence of record upon which to premise the belief that most of the recorded abandonments would be applied for within a short time after the merger is authorized. Also, it is likely that because improved substitute railroad service by the merged company would be available, little or no opposition would be recorded in many instances, and the issue of public convenience and necessity would readily be proved. The record also indicates that some of the abandonments, if applied for, would be subject to vigorous opposition. In either event, the issuance of a certificate permitting abandonment would be tried on the individual merits of each separate line and segment proposed to be abandoned, and exercise of the Commission's discretion to grant or deny the relief sought would be upon the considerations of public need. The fact that requests for permission to abandon lines of the applicants were not made part of the merger application is inconsequential, particularly as the full benefits of the proposed merger are not presumed to be attainable until 5 years after consummation thereof. Also, the arguments are not tenable for the reason that certificates to abandon confer permissive rights

only, and are subject to the applicants' decision to exercise or to forego the privilege accorded by the Commission.

Transfer of lines. Closely allied to the aforesaid problems relating to abandonment of lines of the applicants, is the position of several railroad interveners which suggests that approval of the proposed merger, among other things, should be made subject to the imposition of conditions which would (1) require the merged company to abandon the portions of lines recommended by the consultants, as well as other portions not contemplated by the applicants; and (2)require the

[141]

sale or transfer to the intervener making such proposal, the possession and use of one or more described segments of the abandoned lines. The Commission may not act upon such requests without expressing a prejudgment of the abandonment applications which have not been filed, and in fact, some of which may not be filed before the Commission. However, in proceedings involving requests to abandon lines of railroad, indentifiable affected interests and the public generally receive actual or constructive notice as provided by statute, and persons or corporations which believe they would be affected by a particular proposal are permitted to voice opposition and appear as a party in the proceeding. In that manner, interested persons are accorded the opportunity to present evidence and participate in the making of a complete record upon which the Commission makes its determination of whether the present and future public convenience and necessity requires the requested certification. Within such procedures any responsible person, firm, or corporation may receive consideration of its requests to assume ownership and operation of the line in question, or any part thereof, for purposes of continuing service in interstate commerce after the abandonment by the applicant takes effect. Upon proof that the proposals would be within the overall public

interest, the permission to abandon may be made subject to a condition that the applicant sell the abandoned line to the interested person at a fair price not to exceed the net salvage value thereof. See *Kansas City K. V. R. Inc., Abandonment,* 271 I. C. C. 705 (711). The requests to condition the merger herein upon the applicants' selling or transferring specific lines that would be subject to abandonment proceedings should not be considered at this time in this proceeding. The interveners properly should address such requests as part of the separate abandonment proceedings pertaining to applications that would be filed after consummation of the merger herein.

Other reasons warrant denial of the requests to require the merged company to transfer to interveners other lines not included among those recommended for future abandonments. The railroad interveners would use the Commission's power to impose conditions in section 5(2) proceedings to frustrate the overall objective of the merger herein, and to require dismemberment of the merged company's lines. The type of condition sought probably would be appropriate as part of a proposed plan in the reorganization of bankrupt railroads which would be unable to continue operations unless their plant and facilities are streamlined. In such a situation, decisions to order transfer of the debtor's properties are subject to very strict legal processes under the direct supervision of the Federal courts. Another instance where conditions such as those proposed by the interveners might be warranted, arise where the carrier services previously rendered by a defunct railroad would be unavailable to the public unless other railroads in the territory voluntarily acquire selected portions of the properties and assume responsibility for continuation of the operations involved.

[142]

The circumstances found in the examples cited do not prevail in the proceeding herein. The evidence of the beneficial

effect of the proposals upon the acquiring railroad and the offsetting injuries to the merged company is not convincing, the areas of conflicting contentions are left without resolution. Imposition of the conditions would convert the position of the merged company from that of the dominant owner carrier to that of the subservient user carrier of the properties of the companies constituting the merged company. Such a switch in position is not shown to be in the public interest. Further, adoption of the suggestions would prevent the merged company from putting into effect the modifications in routes, operations, and consolidations necessary to attain the savings in operating costs conceived as part of the merger. If the Commission could find that the granting of conditions permitting extensions of the interveners' lines without an adequate showing that such are required by the public convenience and necessity is justified, and that the merged company is not entitled to a reasonable opportunity to provide the required transportation service, the only forthright action would be to deny the merger transactions in their entirety. Similar requests were considered by the Commission and found unwarranted in *Erie R. Co. Merger, supra.*, p. 231

Divestiture. Several interveners object especially to the proposed transfer to the merged company of the capital stock of L-and-N which Coast Line presently owns. They believe that operation within the Southeastern territory of a combination of railroads consisting of Seaboard, Coast Line and L-and-N, under the same financial control, would create a gigantic railroad system of such proportions that it would overshadow all other railroads operating solely or partially within the area, or, participating in traffic which originates or terminates within the areas served by the merged company and L-and-N. Because such new family relationships would exist, the interveners fear that the present neutrality of Seaboard in through movements with carriers which compete with L-and-N would cease, and the prevailing tendency of Coast

Line to favor operating routes which involve L-and-N would control the present traffic of Seaboard. Thus, the interveners conclude that the merged company would be able to divert from connecting railroads, traffic which would not be susceptible to changes in routing except because of the family relationship with L-and-N. In order to prevent such so-called "devastating" features, Southern and Illinois Central suggest the imposition of a condition precedent to the exercise of any authorization in the merger proceeding, which would require Coast Line or the merged company to dispose of the holdings of L-and-N stock by sale to Illinois Central. The Chicago & Eastern Illinois Railroad Company and Monon Railroad, each of which serves various points in common with, and interchanges freight with L-and-N and Illinois Central, object to the establishment of the family relationship with Illinois Central. These interveners contend that the proposed change in control of L-and-N

[143]

would be inimical to their best interests for the same reasons asserted by Illinois Central and Southern in reference to the situation entailing the merged company and L-and-N.

The premises upon which the divesture arguments are founded assume a situation contrary to the conditions which would arise because of the merger proposals herein. The applicants do not contemplate that L-and-N would be involved in the proposed merger, and there would be no change in the operations of L-and-N after the merged company commences operations. The applicants deny that Coast Line controls the operating or traffic policies of L-and-N, and no evidence to the contrary is included in the record. Nor is there a convincing showing that the friendly or cooperative routing practices between Coast Line and L-and-N is unlawful or discriminatory, or, any greater than normally would be observed by separately owned and operated railroads which connect with each other

at numerous points. There appears to be nothing about the proposal that Illinois Central acquire control of L-and-N which would alter the contemplated operating and traffic relationship between the merged company and L-and-N, unless the intention of Illinois Central is to exercise more direct control than Coast Line heretofore has done. Under the circumstances, the conditions regarding open routes and gateways, and the additonal restrictions designed to protect other railroads operating within, and to and from the areas served by the merged company, would operate to safeguard Illinois Central. In the absence of a voluntary surrender by Coast Line of its ownership of stock of L-and-N, or, the possession by Illinois Central of contractual rights to purchase sufficient capital stock of L-and-N to involve possible acquisition of the power to control, there is no compelling reason to require Coast Line to divest itself of the stock in question. Within the framework of applicable Commission requirements in respect of through routes and joint rates, and the further protection embraced in the conditions which are recommended herein for imposition upon approval of the proposed merger, the divestiture condition would serve no purpose in the public interest.

Employees. On behalf of employees of the applicants and other railroads whose operations might deteriorate by reason of their traffic and revenue being diverted by the merged company, labor organizations request imposition of conditions adequate to protect employees adversely affected in regard to their employment and related rights. Cited as factors deserving of controlling weight in the Commission's consideration herein are the progressively worsening position of employees of railroads in recent years due to drastic reductions in forces; numerous other mergers and consolidations of major railroads already filed or in prospect of early filing and submission for the Commission's decision; that in terms of reduced operating costs, by far the major portion of the benefits to be derived by

the merger and other similiar transactions arises from reduced labor forces and savings in wages and salaries;

[144]

and that limited labor protective conditions in lieu of full employment security are inadequate to compensate the affected employees, their families, and the business and social interests, and general economic welfare of communities in which the employees reside. In view of the foregoing, Labor argues that the proposed merger should be denied as failing to conform with the provisions of section 5(2)(c). In support, is cited *Fort Worth & D. C. Ry. Co. Lease*, 247 I.C.C. 119 (127).

The tenor of Labors' position is that the adverse effect upon railway employees herein would be of such magnitude, and the resulting injuries and disadvantages to the persons and areas directly and indirectly affected would be so severe, that they would outweigh any benefits and advantages expected to inure to the public as a consequence of the proposed merger. Apparently, the organizations do not consider that the applicants and other railroads contemplating merger-type transaction are seeking to institute methods of improving the position and general stability of railroads as important business enterprises and employers. Labor decries the fact that railroad employment, including the forces of Seaboard and Coast Line, has consistently diminished in recent years due to the declining economic position of the carriers, but, expresses no concern for many thousands of railroad employees who were separated from service without the minimal statutory protective conditions, or, for other employees who later may similarly be deprived of employment unless there is developed some practical manner of enabling the railroads to improve their business and financial position. There is no evidence of record from which to conclude that denial of the transactions, or expansion of the protective conditions

heretofore prescribed by the Commission in the approval of merger transactions, would safeguard the remaining community of railroad employees from job losses due to circumstances in regard to which protective conditions are not available.

Labor justifies its position primarily upon the argument that because Seaboard and Coast Line presently are not suffering operating deficits and each has enjoyed reasonable prosperity in recent years, there is no sufficient public need for the improvements which the applicants desire to achieve. The power of the Commission to authorize merger transactions upon finding that such would be consistent with the public interest, does not suggest that the benefits of consolidation are to be denied to railroads which are enjoying profitable operations. *Detroit, T. & I. R. Co. Control,* 275 I.C.C. 455 (489). The general purpose of the provisions of section 5(2), as revised in 1940, is to facilitate mergers and consolidations in the national transportation system. *County of Marin* v. *United States,* 356 U.S. 412 (416). Within that broad concept, in passing upon proposed transactions, the Commission is directed to give weight to the effect upon the public interest, among others, of specific considerations mentioned hereinabove. It is the totality of the effect upon the public interest of numerous considerations, including those mentioned in

[145]

section 5(2)(c), which the Commission must evaluate in arriving at a decision. Taken alone, the Commission may not deny applications because employees would be adversely affected. *Louisville & N. R. Co. Merger,* 295 I.C.C. 457 (501). The Commission's manner of arriving at findings of matters consistent with the public interest under section 5(2), is further defined in subsection (b), which permits approval and authorization of proposed transactions upon the terms and conditions and with the modifications which the Commission finds

to be just and reasonable under the circumstances. Thus, the various effects of the transaction which the Commission must consider are subject to evaluation in light of the terms, conditions, and modifications which the Commission finds just and reasonable. See *Atlantic Coast Line R. Co.*, v. *United States*, 284 U. S. 288, upholding the power of the Commission to prescribe conditions in the public interest.

Labor does not abandon its request that the merger proposed herein be denied, but, urges that if, after consideration of the interest of employees, the Commission approves the transactions as consistent with the public interest, consummation thereof be made contingent upon conditions necessary to protect the interests of affected carrier employees. Such should conform with the intent of Congress expressed in subparagraph (f) of section 5(2), which in essence, requires a fair and equitable arrangement to protect the railroad employees affected during a minimum period of four years from the effective date of the Commission's order, from being in a worse position with respect to their employment. Because of reasons urged to merit denial of the application herein, Labor argues that the conditions prescribed should be broader and more extensive than those heretofore imposed by the Commission under the statute. The reasons supporting the arguments are repetitious of and elaborations upon those before the Commission in *Erie R. Co. Merger, supra.*, p. 233 *et seq.*, in which the *New Orleans conditions* were prescribed. Labor's position that the provisions therein were inadequate to preserve certain incidents to the employment summarized as fringe benefits, were sustained by a lower Court, and reversed on consideration by the Supreme Court, and held untenable, in *Maintenance of Way Employees* v. *United States*, 366 U.S. 169. Excerpts on brief herein, from the arguments of the Government and the Commission in the Supreme Court proceeding, which Labor considers inconsistent with the position of the applicants herein,

present no basis for findings in regard to labor protection other than as in the *Erie case*.

Clarification is required of that portion of the *New Orleans conditions* which prescribes the mechanics of resolving disputes between the railroad and an employee as to whether the complained-of adverse effect did or did not fairly stem from the authorized transaction. Arbitration of disputed claims of the employees presently are covered by

[146]

condition 8 of the *Oklahoma conditions*, and section 13 of the *Washington Job Agreement* provisions, both of which are embraced in the *New Orleans conditions*. Heretofore, in some instances the carriers have refused to accept arbitration procedures under section 8, and have required the employee to invoke the section 13 provision which involves a permanent committee. Decisions of the section 13 committee have required up to 30 months after the claim arose. To correct the situation, Labor requests that a new provision be adopted to require compulsory arbitration by both parties, and to provide that the burden of proof shall shift to the employer upon the employee's presentation of a *prima facie* case in support of the claim in question. Language in lieu of the criticized *Oklahoma* and *Washington Agreement* provisions is presented by Labor as condition 7, among those reproduced hereinabove under the heading "Effect upon Employees". It is reasonable to provide such additional protection to the employees so that an early determination of his status may be forthcoming. The benefits to the well-being of the affected employees would more than outweigh the disadvantages, if any, which the railroad might suffer by the imposition of the compulsory arbitration and the defining of the burden of proceeding with the evidence.

[147]

Another point raised by Labor is the contention that the conditions prescribed should apply to employees of railroads other than the applicants who become adversely affected by consummation of the proposed merger. Concern is expressed particularly for those employees of East Coast who would be disemployed in the event the loss of traffic and revenues necessitates the discontinuance of trains and services, or the abandonment of lines, as a means of effecting operating economies. Section 5(2)(f) refers to "railroad employees affected" and "employees of the carrier or carriers by railroad affected" which Labor argues is sufficiently broad to embrace any railroad employee prejudiced by approval of the transaction in question. Cited in support is *Brotherhood of Railroad Trainmen* v. *Baltimore & Ohio Railroad Company*, 331 U. S. 519 (531). Counsel further contends that the reported decisions of the Commission (about 79) which deny requests for imposition of labor protective conditions to the employees of carriers other than those of the applicants or the carriers party to the proceeding, are premised upon findings that such employees factually were "unaffected" by the authorized transactions. *Baltimore & O. R. Co. Operation*, 261 I.C.C. 615 (621). On that premise, Labor argues that the circumstances that would arise in connection with merger proposed herein are distinguishable from the facts controlling the previous line of decisions.

The record does not sustain a conclusion that adversely affected employees of railroads not party-applicants herein, are employees affected by the merger proposal. The loss of positions and employment rights of persons on the rosters of other railroads would be a secondary consequence of the potential loss of traffic and revenues suffered because of the merged company's operations. The actual extent of the injury to the railroads cannot be determined for the reason that each railroad might find some effective method to cushion or avoid the effect upon its own business. Conceivably, even if the

merger does not take place, as great or greater adverse effect upon the other railroads could occur in the normal day-to-day changes in flow of traffic causing diversions of traffic to the applicants or to any other existing railroad. The number of employees of other railroads would not be within the control of the merged company at any time, and except as to the applicants alone, the transaction authorized herein would not be the proximate cause of changes in railroad employment.

The important fact to be considered is that the Commission in this proceeding is not authorizing the discontinuance of service, or abandonment of lines by East Coast or any other carrier. The authorization under consideration is a specific permanent operating arrangement between two existing railroads whose affected employees are to be protected by prescribed conditions. Thus, the statutory requirements would be satisfied. The reasons which prove the

[148]

correctness of these conclusions are identical with those explained in *Baltimore & O. R. Co., supra,* pages 618 *et seq.* A further reason lies in the circumstance that no railroad which might have believed its interests as an independent company would be seriously affected by the proposed merger, filed a petition to be included in the transaction under section 5(2)(d). Had such been filed and approved upon equitable terms, the order in that respect would have included appropriate protective conditions for the benefit of affected employees.

The imposition of specific conditions for the protection of affected employees, whether or not represented by interveners herein, is not to be construed as precluding the applicants and Labor from arriving by negotiation at any other mutually satisfactory arrangements under the last proviso of section

5(2)(f). Among other forms of protection which Labor asserted would provide satisfactory insurance to the employees, is the so-called "job-freeze", whereby displacements of employees and reductions in jobs would take place only as normal attrition affects the number of present employees of the applicants. A controversy arose as to whether, under attrition conditions, an employee would be entitled to receive any benefits in the event he fails to accept employment with seniority rights, in a position at any location other than where he presently may be domiciled, the duties of which he is qualified and able to perform. Such conditions were prescribed by the Commission in *Chicago, B. & Q. R. Co. Abandonment*, 257 I.C.C. 700 (704-7). The applicants appeared to believe they might accede to job-freeze type of conditions, if appropriate forfeiture provisions are made applicable to employees not willing to change their place of employment. If at any time prior to the statutory consummation of the merger herein, an arrangement is amicably reached by the applicants and representatives of the employees; upon request, that agreement would be acceptable for inposition insofar as they extend to employees represented by the organizations which sign the agreement. Likewise, should there be an agreement upon the terms of a practical arrangement in lieu of the arbitration conditions recommended herein; upon request, any suitable provision in this regard should be considered for adoption by the Commission.

Competition. In one form or another, practically every intervener in opposition to the proposed merger argues that the proposed elimination of competition between Seaboard and Coast Line would do material damage to the interests of users of railroad service, to other railroads, and to affected communities. The view is that continued industrial activities and development within the areas in question depend largely upon the availability of direct service by more than one railroad, and that any loss of such competition would be intoler-

able. The same interests concede

[149]

that improvements of service and facilities such as the applicants contemplate are desirable and would be beneficial to some shippers, but, submit that the loss of competition between railroads would produce serious disadvantages, and that it is preferable to forego the improvements which the merger might produce. Nevertheless, interveners on behalf of railroads, affected communities, several major shipping interests, railway employees, and others, proposed the imposition of conditions to any authorization herein, which would provide limitations upon the merged company's activities to the extent that the benefits to the public would overcome whatever disadvantages might accompany consummation of the proposed merger.

The conflicting views of railroad users who support the merger and those who oppose the transactions are irreconcilable although the primary interests of both groups are selfish. For instance, the supporters of the merger foresee faster, more frequent, and more reliable train service; and the use of the merged company's potential savings and increased earnings to improve facilities and car supply. They believe that the resulting situation would permit returning to railroads considerable traffic which the shippers presently move via highway and water carriers. Also, they are hopeful that the increased traffic would aid in stemming the continuously rising freight rates and charges, and produce conditions which would warrant decreases in rates. On the other hand, shipper interests opposing the merger decry the loss of their present ability to negotiate separately with competing railroads for improved services and additional privileges, for the granting of which the shippers rely partially upon the pressure of existing competition. They also object to the newly acquired competitive advantages that other firms in the same industry would receive because the latters' plants are located at points which

would enjoy more of the direct benefits of the merger than the protesting shippers would realize. Neither of these objectives are among the purposes the Commission is directed to consider in determining the effect of section 5 authorizations upon the several modes of transportation.

Officials of the cities of Tampa and Savannah and their respective ports concur in the position of some of the important industries, terminal companies, and trade associations at those points which adopt the foregoing arguments in opposition to the proposals herein. They urge that the loss to shippers of the advantages of having more than one railroad available at a given point or plant would rapidly prejudice the communities and ports, and the trade areas served by each, and belittle their status in comparison to other points and ports in the Southeast. That point of view prevails despite assurances that the existing major routes and lines would be retained and could be selected by the shippers if desired; and that consolidation of trains

[150]

services, and elimination of yard and terminal delays would result in improved transportation service to the affected areas. Likewise, they are not convinced that the industrial development services of the merged company would be more effective and beneficial than such services offered by each applicant in competition with one another.

Many of the advantages, asserted by the interests which contend that competition between railroads must be preserved at the sacrifice of the improvements and other benefits of the proposed merger, exist as dynamically in areas served only by a single railroad. Railroad managements normally are known to be responsive to proposals which reasonably may be expected to increase traffic and revenues, or aid in the industrial development of areas tributary to their lines. The

motivations which induce competing railroads to extend their services to the public are equally attractive to railroads not subject to direct competition by other railroads. The effects of regulations upon the affairs of railroads are such that competition between them does not result in the shipper being accorded savings in transportation costs not also available from competing railroads. The advantages, if any, which shippers derive from dealing separately with competing railroads results in route or service modifications, and such inevitably are equalized by the competitor. Where justified, the same type of changes evolve, even where the only competition is with other modes of transportation. The total effect of the requested railroad competition is to force increased facilities and services at little or no additional return to the railroads, and to increase the ability of competing modes of transportation to attract desirable traffic away from the railroads. Undoubtedly, this redounds to the immediate benefit of the industries involved, and in that respect fulfills an aspect of public interest, but, there is no evidence that the railroads are strengthened or otherwise advantaged. In essence, the situation which the shippers desire to perpetuate are contrary to the objective of the national transportation policy to foster sound economic conditions in transportation and among the several modes of carriers, particularly when compared to the benefits attributable to merger proposals.

Sections of the report herein, pertaining to the potential effect of the proposed merger upon other railroads within the area served by Seaboard and Coast Line, review other aspects of competition between railroads. Several railroad interveners presently compete with the direct routes of one of the applicants by virtue of participating with the other applicant in the movement of traffic over competitive through routes. Inasmuch as participation in through routes generally is voluntary by the railroads involved and may be discontinued by ap-

propriate unilateral action, the effect which the interveners consider as threats

[151]

related to the merger transaction, could occur even if no application were filed. In addition to the desire of Seaboard to compete with Coast Line, and vice versa, there are reasons of self-benefit which causes each to continue to participate in through routes with the interveners. The record shows that numerous important shippers and receivers of freight have plant facilities which are served directly only by one or another of the interveners. Such patrons would continue to provide traffic for the benefit of the interveners regardless of the outcome of the merger proposed herein. Seaboard and Coast Line compete with each other and with other available trunk-line railroads for participation in the movement (beyond the lines of the interveners) of traffic originating at or destined to the plants local to the intervener railroads. The desire to continue friendly relations with the interveners would be as effective a deterrent upon the merged company's policies as it presently is upon the applicants' policies. Obviously, any undeserved disregard of the position of any intervener and the loss of its willing cooperation in matters of interest to the merged company, could backfire to the detriment of the latter. It is reasonable to conclude that removal of the competition between Seaboard and Coast Line, of itself, would not tend to disrupt appreciably the present patterns of traffic movement within the affected areas.

The Department of Justice, intervener in opposition to the proposed merger, participated in limited cross examination of a few witnesses of the applicants. On brief, Justice urges that the application be denied on grounds that the proposed merger would be contrary to the policy of the antitrust laws; and contrary to section 5(2) of the Interstate Commerce Act and the National Transportation Policy; for the reasons that

approval would (a) destroy the competition now existing between Seaboard and Coast Line, (b) jeopardize the existence of several small railroads, (c) impose unnecessary hardships on communities and shippers, and (d) impair adequate transportation. Justice also comments in respect of evidence adduced by other parties, and interprets each phase in the light least favorable to the applicants. These matters are covered hereinabove under appropriate topic headings and need no further discussion.

Section 5(11) of the act defines the Commission's authority under section 5 as exclusive and plenary, and among other things, provides that carriers participating in a transaction approved or authorized under section 5 shall be relieved from the operation of the antitrust laws and other restraints, etc., insofar as may be necessary to enable them to carry into effect the transaction so approved in accordance with the terms and conditions, if any, imposed by the Commission. In 1940, when section 5 was revised and section 5(2)(a) was enacted in its present form, the purpose of Congress was to facilitate merger and consolidation in the national transportation system. The Commission's

[152]

determination of the merger proposal and the related transactions herein must be in light of that purpose. In that connection, the Supreme Court stated in *Texas* v. *United States*, 292 U. S. 522 (530), that the primary aim of the National Transportation Policy is to secure the avoidance of waste, and that such avoidance, as well as the maintenance of service, is a direct concern of the public.

Justice acknowledges that mergers of railroads validly approved by the Commission, under the act, insulates the carriers involved from the antitrust laws. However, it argues that the proposal herein would contravene the policies of the Sherman

Act and section 7 of the Clayton Act, because the effect of eliminating the competition between Seaboard and Coast Line would be to tend to create a monopoly. On such basis, Justice contends that the proposed merger would not be consistent with the public interest; that immunity from the provisions of the antitrust laws should not be conferred; and that the application herein should be denied. Cited as supporting its views are *United States* v. *Union Pacific R. R. Co.* 226 U. S. 61; *United States* v. *Du Pont & Co.*, 353 U.S. 586 (590); and *United States* v. *Maryland & Virginia Milk Producers Assoc.*, 167 F. Supp. 799 (807), affirmed 362 U. S. 458. Justice submits that in considering mergers, the Commission may not ignore the antitrust laws, but, has the duty to consider the effect of the transactions upon competitors and upon the general competitive situation. *McLean Trucking Co.* v. *United States*, 321 U. S. 67, (80, 86-7).

Justice concludes that the proposed merger would not conform with the requirements of section 5(2)(c) and the National Transportation Policy, in respect of the effect upon adequate transportation service to the public and promotion of efficient service and sound economic conditions in transportation; but contrarywise, would impair railroad service to a great segment of the Southeast with no offsetting advantages derived by the public. To arrive at such a finding requires that the material which the applicants produced on the record, and the direct evidence by the applicants and supporting shipper and public witnesses be completely disregarded, or be considered of no probative value. Such an evaluation is not justified. Further, Justice appears to give no credit to the Commission's statutory power and competence to subject the transactions under consideration to such terms and conditions and such modifications as it finds to be just and reasonable. However, other vehement interveners concede that if appropriate restrictive conditions are prescribed by the Commission,

the proposed merger could be fully consistent with the public interest.

The contention that cessation of active competition between Seaboard and Coast Line within the area they both serve would impair transportation service within an important segment of the Southeast and tend to create a monopoly, is not tenable. Throughout the entire area where the unified

[153]

lines of the merged company would be situated, with the exception of the central and western portions of the Florida peninsula, the merged company would face the vigorous competition of Southern Railway and its connecting railroads. Between many of the major gateways and industrial centers intermediate on its lines, Southern and other major railroads, and numerous smaller railroads operate as established competing carriers of Seaboard and Coast Line.

The arguments presented by Justice ignore many facts of life in the railroad industry. Generally, the important revenue producing traffic is that which generates long hauls extending between two or more major rate territories, or otherwise are in the nature of transcontinental movements. On such traffic, the through movement is handled successively by many railroads, and the competition which exists is between available routes rather than between the railroads concerned. Often, railroads which do not serve the same areas beyond common gateway points are in position to, and actually do compete with each other. Such competition frequently prevents individual railroads from participating in routes which would provide them the longest practicable haul over their own lines, and the highest revenue payment. More often than not, the primary aspect of competition having bearing on the movement of important long-haul traffic involves the question of which railroad is able to convince the persons responsible for

the routing of the most desirable traffic, to designate the specific routes most favorable to the soliciting railroad. Many considerations including service, the condition and availability of cars and special equipment, and the shippers' policy to divide the traffic amongst all carriers equally, control the routing of most railroad traffic. Because conditions recommended herein would require the merged company to preserve all the existing open routes and gateways in which Seaboard and Coast Line individually participate, and to make other traffic concessions not normally required to be observed; the ability of the merged company to compete with other railroads might be very little better, if any, than the ability of the applicants presently to do so.

The foregoing considerations relating to railroad competition give no weight to the availability of other modes of transportation that will compete with the merged company. The record is replete with evidence that, especially in recent years for many different reasons, whenever railroads are unable to compete equally with trucks and barges as to rates and services, the available traffic is shipped via other modes, and the railroads lose all participation therein. Irrespective of the position to which Justice subscribes herein, the conclusion is adequately warranted that any injuries to the public that would follow the diminution of the direct competition between railroads as a result of consummation of the proposed merger, under the terms and conditions recommended herein, would be more than offset by the accompanying immediate and long-range benefits to the applicants and to the public generally.

[154]

RECOMMENDATIONS

The appropriate findings required by the provisos of the paragraphs of section 5(2), insofar as they apply to merger

transactions, are justified by the record herein, and are supported by adequate evidence. Undoubtedly, the foreseeable benefits are desirable and important to the railroads involved. Likewise, they would provide advantages permitting continued adequate and improved railroad transportation to the shipping public. The required statutory finding that the proposed merger will be consistent with the public interest should be subject to terms and conditions, and modifications which the examiner recommends for adoption as just and reasonable under the circumstances. The conditions would be effective in providing a reasonable measure of protection from injuries to which certain interests would be exposed as a direct effect of the merger of Seaboard and Coast Line. The connecting and competing railroads would be accorded a vital opportunity to share in the benefits which the authorization herein would make available to the applicants and the public. Exercise of the conditional rights would sharpen the ability of the other railroads to compete with the merged company, and of course, would tend to dilute some of the direct savings and increased revenues anticipated by the applicants. However, the merged company would be able to establish the proposed new routes and combined through freight trains over the consolidated lines of Seaboard and Coast Line, subject to its ability to induce the movement of traffic thereover.

The "gateway" conditions which the applicants stipulated would be acceptable (numbered 1 through 5, and 9) would require the merged company to honor all the routing practices and traffic policies heretofore applied by Seaboard and Coast Line. They would effectively prevent the development of any new affinity with railroads affiliated with, but not subsidiary to the merged company, except to the extent that such changes would be accomplished by normal competitive activities subject to the Commission's supervisory powers, and the statutory rights of other railroads and persons to institute actions for appropriate relief.

Additional conditions restricting the traffic, service, and operating prospects of the merged company (numbered 6 and 7), although applicable to all affected railroads, would inure especially to the benefit of weak short-line carriers. The competing and connecting railroads through their own effective solicitation and sales efforts partly in direct competition with the merged company, would be afforded a reasonable opportunity to protect their present traffic from serious deterioration due to diversion caused by the imposing position of the merged company. Also, they would be in a better position to attract new business to replace some of the lost traffic and revenues. As a result, the future

[155]

ability of such railroads to continue and expand their operations would be safeguarded, and the threatened indirect effect upon shippers, communities, and defense installations would be less likely to occur. Condition 8, would permit Southern Railway Company to elect whether to continue operations under trackage rights over the consolidated lines of the merged company. The applicants are agreeable to giving effect to such a provision, and imposition thereof is fitting in view of the potential change in circumstances resulting from the merger herein and the proposed abandonments of the applicants' lines incidental thereto.

In view of the foregoing considerations, the examiner recommends specific conditions, as follows:

1. Upon consummation of the merger, the Seaboard Coast Line railroad company shall maintain and keep open all routes and channels of trade via existing junctions and gateways, unless and until otherwise authorized by the Interstate Commerce Commission.

2. The present neutrality of handling traffic inbound and outbound by the applicants shall be continued so as to permit equal opportunity for service to and from all

lines reaching the rails of these carriers without discrimination as to routing or movement of traffic and without discrimination in the arrangement of schedules or otherwise.

3. The present traffic and operating relationships, including among other things, interchange arrangements and switching practices, between the applicants on the one hand, and all lines connecting with their tracks, on the other, shall be continued insofar as such matters are within the control of the Seaboard Coast Line Railroad Company.

4. Seaboard Coast Line Railroad Company shall accept, handle, and deliver all cars inbound and outbound, loaded or empty, without discrimination in promptness or frequency of service as between cars destined to or received from competing carriers, and irrespective of destination or route of movement.

5. Seaboard Coast Line Railroad Company shall not do anything to restrain or curtail the right of industries now located on lines of the applicants to route traffic over any or all existing routes and gateways.

6. Seaboard Coast Line Railroad Company shall preserve and maintain the same schedules on the present freight trains of Seaboard and Coast Line which the

[156]

merged company would continue after consummation of the merger; unless such schedules, after revision, would provide later departure times and/or earlier arrival times at junctions and gateways in such a manner that the existing cutoff times for connecting trains of other railroads would not be changed, or, would not cause or permit such connections to be delayed or broken.

7. On a reciprocal basis with all connecting railroads requesting such arrangements and willing to afford equal privileges to the merged company, Seaboard Coast Line Railroad Company shall publish and file appropriate tariffs and routing schedules, effective on or after the

date of consummation of the merger authorized herein, providing the following:

(a) Opening of the junctions and gateways of Seaboard Coast Line Railroad Company as to all its traffic moving through each such gateway, at the lowest applicable rate available through any other junction or gateway of the said merged Company; and

(b) New routes with applicable competitive joint rates and just and reasonable divisions thereof, on the traffic handled by the said merged company in connection with other railroads via available junctions and gateways, moving to and from the stations of the merged company on the one hand, and, on the other, points and stations on or beyond the lines of the aforesaid connecting railroad or railroads.

8. At the request of Southern Railway Company, presented in writing not more than 6 months after the date of consummation of the merger authorized herein, or, not more than 6 months after the effective date of any certificate of the Commission permitting abandonment by Seaboard Coast Line Railroad Company of any line of railroad directly affecting the lines described in this condition 8, Seaboard Coast Line Railroad Company shall cancel the existing trackage agreements under which Southern Railway operates over lines of the Atlantic Coast Line Railroad Company, (1) between Hardeeville, S. C., and Jacksonville, Fla., and (2) between Selma, N. C., and Pinners Point, Va.; and shall refrain from opposing or in any manner protesting any request by Southern Railway for permission under section 1(18-20), to abandon operations pursuant to the aforesaid trackage agreements.

[157]

9. Any party or person having an interest in the subject matter herein, at any future time, may make application for such modification of the conditions prescribed as

part of the authorization herein, or any of them, as may be required in the public interest; and jurisdiction will be retained by the Commission to reopen the proceeding herein on its own motion for the same purpose.

Under the circumstances detailed hereinabove, the examiner recommends employee protective conditions the same as those prescribed in *New Orleans Union Passenger Terminal Case,* 282 I.C.C. 271. With the modification of a single condition as explained hereinbelow, the aforesaid conditions would fully comply with the statutory standards requiring fair and equitable arrangements to protect the interests of railroad employees affected. Those portions of the *New Orleans conditions,* drawn from and identified as conditions 8 of the *Oklahoma conditions,* and section 13 of the *Washington Job Agreement* provisions, shall be deleted and considered of no force and effect herein. In lieu of the condition and section referred to, shall be substituted a new condition (in four paragraphs), providing the following:

In the event any dispute or controversy arises with respect to the protection afforded by these conditions or with respect to their interpretation, application, or enforcement, which cannot be settled by the carriers and the employee or his authorized representatives within 30 days after the dispute arises, it may be referred by either party to an arbitration committee for consideration and determination.

Upon notice in writing served by one party on the other of intent by that party to refer the dispute or controversy to an arbitration committee each party, within 10 days, shall select one member of the arbitration committee, and the two members thus chosen, within 10 days, shall select a third member who shall serve as chairman. Should the two committee members be unable to agree upon the appointment of the third member, then the parties to the dispute or controversy, within an additional 10 days, shall agree to an alternative method by which the third member shall be appointed.

In the processing of claims arising under this condition, the employee shall have the burden of establishing a *prima facie* case. The carrier then shall have the burden of proving that the employee was affected as the result of circumstances not connected with the transaction in relation to which the conditions herein are prescribed. The decision of the majority of the arbitration committee shall be final, binding, and conclusive.

[158]

The salaries and expenses of the third member of the arbitration committee shall be borne equally by the parties to the arbitration proceeding, and all other expenses shall be paid by the party incurring them.

Consistent with the public interest, the conditions recommended for imposition upon the merger authorized herein would have the effect of restraining any possible misuse of the competitive power of Seaboard Coast Line Railroad Company, and would improve correspondingly the ability of other railroads to continue operations within the areas served by the merged company. Several interveners which suggested specific conditions to protect their individual interests, insinuated that those pleadings constituted petitions to be included in the merger transaction, upon findings that such would be consistent with the public interest under section 5(2)(d). The pleadings are not petitions, and contain no requests to be included in the merger transaction. To the extent that the conditions recommended for adoption herein do not embrace the relief sought by the interveners, the requests are recommended for denial on the merits. No other requests by the interveners remain to be considered. See *Chicago, M. St. P. & P.R. Co. Trustees Operation*, 247 I.C.C. 1 (7).

Additional conditions should be prescribed which would provide any affected railroad a reasonable extension of the period within which to file appropriate petitions to be included in the transaction. As shown, some of the modifications of the existing operations and service of Seaboard and Coast Line are

not scheduled to be completely fulfilled until 5 years after consummation of the merger. Because any delayed change of the situation, alone, or, in concert with other changes already achieved, may be the cause of new adverse effects upon certain railroads and endanger their ability to survive, such affected carriers should be permitted to petition the Commission under the provisions of section 5(2)(d), prior to consummation of the merger, or, up to 5 years after the date thereof. The examiner recommends that the Commission retain jurisdiction during the 5 years to consider any petition filed by other railroads as directly related to the proceedings in Finance Docket No. 21215. In connection with petitions so filed, the merged company should be compelled to seriously consider the proposals presented, and to negotiate in good faith in arriving at amicable solutions to the problems involved. The merged company also should be obliged to consent to and, if required, join in the filing of such petitions; and to cooperate in the presentation of adequate evidence upon which to make the required determination of consistency with the public interest.

Among the types of relief which the individual railroad petitioners might request in the future, subject to the Commission's approval and authorization, would be any

[159]

practicable proposal to coordinate portions of the lines, freight and passenger terminals, or other properties of the petitioner with similar properties of the merged company situated in the immediate vicinity or adjacent to each other. With variations according to the facilities in question, the proposals might include incidental abandonments of lines of the petitioner and/or the merged company, and related construction of connecting tracks; the acquisition of trackage rights on a reciprocal basis or otherwise; and the consolidation and joint use of the coordinated facilities. Agreements pertaining to such proposals could provide for division of the cost of the projects and the

sharing, on just and fair bases, of the continuing savings that would evolve. Likewise, appropriate provision could be arrived at for the protection of the existing business of each participating railroad, and the continued exclusive service of industries reached by either of the carriers, but, not by the other. Typical of such transactions and the objectives served in the public interest, by coordination of facilities of separate railroads, is the authorization of the Commission in *Delaware, L. & W. R. Co. Trackage Rights,* 295 I.C.C. 743. In the same vein, as part of a plan of coordination or otherwise, the petitioning affected railroads could request the merged company to provide adequate joint use of yard facilities and related locomotive, train, and car services at common junction points, on a reasonable basis of payment.

Another area in which future petitions to be included in the transaction herein may be filed would permit any affected railroad, subject to approval and authorization by the Commission, to require the merged company to acquire by purchase the capital stock of the petitioning railroad in sufficient amounts to permit merger thereof into the Seaboard Coast Line Railroad Company, or, to purchase the properties of the aforesaid petitioner, and to consolidate such properties with those of Seaboard Coast Line, upon terms and conditions mutually agreed upon by the parties to the purchase agreements, or, prescribed by the Commission as just and reasonable and consistent with the public interest, pursuant to section 5(2). Similar conditions as to specified railroads were prescribed by the Commission in *St. Louis S. W. Ry. Control,* 180 I.C.C. 175 (191).

STATUTORY FINDINGS AND ORDER

Based upon his review of the entire record, and primary findings and pertinent discussion and conclusions thereon, the examiner finds that, subject to the conditions requiring (a)

maintenance of existing open routes and gateways and services, (b) joining in institution of new routes and services, (c) canceling of certain trackage rights at the option of the user company, (d) protection of adversely affected railway employees, and (e) retaining of jurisdiction herein to consider petitions to be included in the

[160]

transactions herein, if any, subsequently filed by affected other railroads; (1) the merger of the properties and franchises of Atlantic Coast Line Railroad Company into the Seaboard Air Line Railroad Company, the name of which would be changed to Seaboard Coast Line Railroad Company; (2) acquisition by Seaboard Air Line Railroad Company of sole or joint control of carriers subsidiary to or affiliated with Atlantic Coast Line Railroad Company through ownership of stock or lease, including trackage rights over or joint use of railroad lines of certain carriers; and (3) transfer of the motor carrier operating rights of Atlantic Coast Line Railroad Company to the Seaboard Air Line Railroad Company to enable the latter to use service by motor vehicle to public advantage and not unduly restrain competition; all subject to the terms and conditions and such modifications above set forth and found to be just and reasonable; are within the scope of subparagraph (a) of section 5(2) of the Interstate Commerce Act, and are consistent with the public interest.

The examiner further finds that the issuance by Seaboard Air Line Railroad Company of 3,398,345 shares of $20 per share par value common stock, to be issued in conversion of the outstanding shares of preferred stock and the common stock of the Atlantic Coast Line Railroad Company, pursuant to the plan of merger authorized herein; and the assumption by the said Seaboard Air Line Railroad Company of the obligations and liabilities of Atlantic Coast Line Railroad Company existing on the date of the merger, and in respect of certain

securities and obligations of companies related to Atlantic Coast Line Railroad Company which are contingently guaranteed by the said carrier either solely or jointly with other guarantors; are for a lawful object within the corporate purposes of Seaboard Air Line Railroad Company, and are compatible with the public interest, and necessary or appropriate for or consistent with the proper performance by it of service to the public as a common carrier, and which will not impair its ability to perform that service, and (b) is reasonably necessary and appropriate for such purpose.

Premises considered, it is the ORDER of the hearing examiner that:

The motions of several interveners that the application herein be dismissed for failure of the applicants to request certificates permitting abandonment of lines of railroad of Seaboard Air Line Railroad Company and Atlantic Coast Line Railroad Company, as contemplated in the plan of merger, be, and they are, hereby denied.

The supplemental application filed herein by Mercantile-Safe Deposit and Trust Company, for authority under section 5(2) to acquire indirect control of Seaboard Coast Line Railroad Company and its common carrier subsidiaries and

[161]

affiliates, by virtue of ownership of a majority of the capital stock of Atlantic Coast Line Company, a carrier subject to the Interstate Commerce Act, which herein is authorized to acquire control of the said Seaboard Coast Line Railroad Company, be, and it is hereby, dismissed.

Merger of the properties and franchises; acquisition of sole or joint control of carriers subsidiary to or affiliated with, and trackage rights over and joint use of certain lines of other railroads; and transfer of the outstanding motor carrier operating rights of Atlantic Coast Line Railroad Company into the Sea-

board Air Line Railroad Company, the name of which will be changed to Seaboard Coast Line Railroad Company, through acquisition of capital stock pursuant to the approved plan of merger; and, by virtue of such merger, acquisition of indirect control of Seaboard Air Line Railroad Company, the surviving corporation, by Atlantic Coast Line Company, a holding company, be and they are hereby, approved and authorized subject to specified terms and conditions and modifications;

The issuance by Seaboard Air Line Railroad Company of 3,839,345 shares of $20 per share par value common stock, pursuant to the aforesaid plan of merger, and assumption by the said Seaboard Air Line Railroad Company of the obligations and liabilities of Atlantic Coast Line Railroad Company existing on the date of merger, and in respect of securities and obligations of companies subsidiary to or affiliated with the latter, which are contingently guaranteed either solely by Atlantic Coast Line Railroad Company, or jointly with other guarantors, upon the terms and for the purposes described, be, and they are hereby, authorized;

Except as herein authorized, the aforesaid stock shall not be sold, pledged, repledged, or otherwise disposed of by Seaboard Air Line Railroad Company, unless or until so ordered or approved by the Commission;

Seaboard Air Line Railroad Company shall report concerning the matters involved herein in conformity with the orders of the Commission, division 4, dated August 9, 1946, as amended, respecting applications filed under section 20a of the Interstate Commerce Act (49 CFR 56.4 and 56.6);

The authority herein granted shall not be exercised prior to the date of service of a notice or order stating that this recommended order has become the order of the Commission;

Nothing herein shall be construed to imply any guaranty or obligation as to said securities or dividends thereon, on the

part of the United States; and

[162]

If the authority herein granted is not exercised within one year from the effective date hereof, or such further time as may be fixed by the Commission, it shall be of no further force or effect.

By the Commission, Hyman J. Blond, Hearing Examiner.

Dated at Washington, D. C. this 16th day of August, A. D. 1962.

HAROLD D. MCCOY,

Secretary

(SEAL)

F. D. No. 21215

Appendix "A"

APPLICANTS' CONTROL OR OWNERSHIP OF OTHER CARRIERS SUBJECT TO THE ACT

Seaboard Air Line Railroad Company

Names of Carrier	*Extent of control (Percents)*
Albany Passenger Terminal Co.	4.58
Athens Terminal Company (a)	50.
Baltimore Steam Packet Company	50.
Birmingham Terminal Company	16.67
Chatham Terminal Company	50.
Columbia, Newberry & Laurens R.R. Co.	16.67
Durham Union Station Company	25.
Gainesville Midland R. R. Co.	100.
Georgia, Florida & Alabama R. R. Co.	100.
Jacksonville Terminal Company	25.
Norfolk and Portsmouth Belt Line R. R.	12.5
North Charleston Terminal Company	33.33
The Pullman Company	1.74
Railway Express Agency, Inc. (b)	1.6
Richmond Terminal Railway Company	33.33
Savannah Union Station Company	33.33

Tampa & Gulf Coast R. R. Co.	100.
Tampa Union Station Company	66.67
Tavares and Gulf Railroad Co.	100.

(a) In addition, the Gainesville Midland Railroad Company, a wholly owned subsidiary of Seaboard, owns 50 percent.

(b) In addition, the Georgia, Florida & Alabama Railroad Company owns 1 share.

[1]

F. D. No. 21215

Appendix A.

APPLICANTS CONTROL OR OWNERSHIP OF OTHER CARRIERS SUBJECT TO THE ACT

Atlantic Coast Line Railroad Company

Name of Carrier	*Extent of control (Percents)*
Albany Passenger Terminal Co. (a)	41.
Atlanta & West Point R. R. Co. (b)	6.4
Atlantic & East Coast Terminal Co.	50.
Augusta & Summerville R. R. Co.	37.5
Augusta Belt Railway Co.	50.
Augusta Union Station Company	50.
Central Railroad Company of South Carolina	36.5
Charleston Union Station Company	50.
Chesapeake Steamship Company (Inactive)	33.33
Columbia, Newberry & Laurens R. R. Co.	80.
Columbia Union Station Company	50.
Duval Connecting Railroad Company	50.
East Carolina Railway	100.
Ft. Myers Southern Railroad Co.	100.
Goldsboro Union Station Company	33.33
Jacksonville Terminal Company	25.

Louisville and Nashville Railroad Co.	33.7
Milledgeville Railway Co.	50.
Monroe Railroad Company	50.
Norfolk and Portsmouth Belt Line R. R. Co.	12.5
North Charleston Terminal Company	33.33
Peninsular & Occidental Steamship Company	50.
The Pullman Company	2.5
Railway Express Agency, Inc.	2.
Richmond Terminal Railway Company	33.33
Rockingham Railroad Co.	100.
Savannah River Terminal Co.	66.67
Savannah Union Station Company	33.33
South Carolina Pacific Ry. Co.	36.8
Spartanburg Terminal Company	75.
Tampa Southern Railroad Co.	100.
Tampa Union Station Company	33.33
Virginia & Carolina Southern R. R. Co.	100.
Winston-Salem S. B. Ry. Co.	50.

(a) In addition the A. & W. P. R. R. Co. owns 33.33 percent of the outstanding stock.

(b) Option to Georgia Railroad & Banking Company to purchase 1,107 of 1,588 shares of common stock at expiration of lease of Georgia Railroad. [2]

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SEABOARD AIR LINE RAILROAD COMPANY
ATLANTIC COAST LINE RAILROAD COMPANY
SEABOARD COAST LINE RAILROAD COMPANY

Finance Docket No. 21215

ACTUAL, COMBINED AND PRO FORMA GENERAL BALANCE SHEETS AS OF AUGUST 31, 1960,
AFTER GIVING EFFECT TO MERGER OF ATLANTIC COAST LINE RAILROAD COMPANY

ASSETS

		Seaboard Air Line (Actual)	Atlantic Coast Line (Actual)	Combined	Adjustment for Acquisition of Atlantic Coast Line	Adjusted and Combined (Pro Forma)
	CURRENT ASSETS					
(701)	Cash	$ 3,280,469	$ 8,531,576	$ 11,812,045	$ —	$ 11,812,045
(702)	Temporary cash investments	$ 13,047,796	5,501,591	18,549,387	—	18,549,387
(703)	Special deposits	1,121,008	2,283,778	3,404,786	—	3,404,786
(706)	Net balance receivable from agents and conductors	1,660,682	2,262,487	3,923,169	—	3,923,169
(707)	Miscellaneous accounts receivable	2,931,739	13,479,017	16,410,756	—	16,410,756
(708)	Interest and dividends receivable	110,369	1,087,467	1,197,836	—	1,197,836
(709)	Accrued Accounts receivable	4,517,507	1,402,812	5,920,319	—	5,920,319
(710)	Working fund advances	74,430	252,237	326,667	—	326,667
(711)	Prepayments	359,372	96,917	456,289	—	456,289
(712)	Material and supplies	13,083,158	11,761,466	24,844,624	—	24,844,624
(713)	Other current assets	380,889	45,553	426,442	—	426,442
	Total current assets	40,567,419	46,704,901	87,272,320	—	87,272,320
	SPECIAL FUNDS					
(715)	Sinking funds	753	3,783	4,536	—	4,536
(716)	Capital and other reserve funds	3,837,693	7,758,758	11,596,721	—	11,596,721
(717)	Insurance and other funds	60,000	346,083	406,083	—	406,083
	Total special funds	3,898,716	8,108,624	12,007,340	—	12,007,340
	INVESTMENTS					
(721)	Investments in affiliated companies	9,348,045	76,938,385	86,286,430	—	86,286,430
(722)	Other investments	1,242,708	287,706	1,530,414	—	1,530,414
	Total investments	10,590,753	77,226,091	87,816,844	—	87,816,844
	PROPERTIES					
(731)	Road and equipment property	537,460,863	562,763,010	1,100,223,873	—	1,100,223,873
	Road	273,694,233	309,949,145	583,643,378	—	583,643,378
	Equipment	255,605,647	251,126,255	506,731,902	—	506,731,902
	General expenditures	8,160,983	1,687,610	9,848,593	—	9,848,593
(732)	Improvements on leased property	934,401	412,250	1,346,651	—	1,346,651
	Road	938,913	412,250	1,351,163	—	1,351,163
	General expenditures	(4,512)	—	(4,512)	—	(4,512)
(733)	Acquisition adjustment	(82,622,477)	(4,738,407)	(87,360,884)	—	(87,360,884)
(734)	Donations and grants—Cr.	(3,218,184)	(3,391,060)	(6,609,244)	—	(6,609,244)
	Total transportation property	452,554,603	555,045,793	1,007,600,396	—	1,007,600,396
(735)	Accrued depreciation—Road and equipment	(122,729,045)	(99,435,214)	(222,164,259)	—	(222,164,259)
(736)	Amortization of defense projects—Road and equipment	(19,995,478)	(37,246,652)	(57,242,130)	—	(57,242,130)
	Total transportation property less recorded depreciation and amortization	309,830,080	418,363,927	728,194,007	—	728,194,007
(737)	Miscellaneous physical property	11,641,485	7,029,722	18,671,207	—	18,671,207
	Total properties less recorded depreciation and amortization	321,471,565	425,393,649	746,865,214	—	746,865,214
	OTHER ASSETS AND DEFERRED CHARGES					
(741)	Other assets	310,049	1,739,311	2,049,360	—	2,049,360
(742)	Unamortized discount on long-term debt	1,235,383	611,154	1,846,537	—	1,846,537
(743)	Other deferred charges	729,138	1,283,917	2,013,055	—	2,013,055
	Total other assets and deferred charges	2,274,570	3,634,382	5,908,952	—	5,908,952
	TOTAL ASSETS	$378,803,023	$561,067,647	$ 939,870,670	$ —	$ 939,870,670

( ) Denotes Credit.

SEABOARD AIR LINE RAILROAD COMPANY
ATLANTIC COAST LINE RAILROAD COMPANY
SEABOARD COAST LINE RAILROAD COMPANY

Finance Docket No. 21215

Appendix "B" — p. 2

ACTUAL, COMBINED AND PRO FORMA GENERAL BALANCE SHEETS AS OF AUGUST 31, 1960,
AFTER GIVING EFFECT TO MERGER OF ATLANTIC COAST LINE RAILROAD COMPANY

LIABILITIES AND SHAREHOLDERS' EQUITY

		Seaboard Air Line (Actual)	Atlantic Coast Line (Actual)	Combined	Adjustment for Acquisition of Atlantic Coast Line	Adjusted and Combined (Pro Forma)
	CURRENT LIABILITIES					
(752)	Traffic and car-services balances—Cr.	$ 883,373	$ 117,632Dr	$ 765,741	$ —	$ 765,741
(753)	Audited accounts and wages payable	4,737,751	5,368,952	10,106,703	—	10,106,703
(754)	Miscellaneous accounts payable	1,707,199	2,455,409	4,162,608	—	4,162,608
(755)	Interest matured unpaid	412,996	815,552	1,228,548	—	1,228,548
(756)	Dividends matured unpaid	42,162	10,056	52,218	—	52,218
(757)	Unmatured interest accrued	937,739	982,452	1,920,191	—	1,920,191
(758)	Unmatured dividends declared	—	1,317,778	1,317,778	—	1,317,778
(759)	Accrued accounts payable	4,992,179	1,738,873	6,731,052	—	6,731,052
(760)	Federal income taxes accrued	3,689,153	2,012,031	5,701,184	—	5,701,184
(761)	Other taxes accrued	2,958,405	3,714,871	6,673,276	—	6,673,276
(763)	Other current liabilities	1,605,903	1,223,929	2,829,832	—	2,829,832
	Total current liabilities (exclusive of long-term debt due within one year)	21,966,860	19,522,271	41,489,131	—	41,489,131
	LONG-TERM DEBT DUE WITHIN ONE YEAR					
(764)	Equipment obligations and other debt	10,105,425	9,564,865	19,670,290	—	19,670,290
	LONG-TERM DEBT DUE AFTER ONE YEAR					
(765)	Funded debt unmatured	41,022,709	118,807,891	159,830,600	—	159,830,600
(766)	Equipment obligations	69,587,000	62,722,018	132,309,018	—	132,309,018
	Total long-term debt due after one year	110,609,709	181,529,909	292,139,618	—	292,139,618
	RESERVES					
(771)	Pension and welfare reserves	13,333	163,945	177,278	—	177,278
(773)	Equalization reserves	98,283	618,432Dr	520,149Dr	—	520,149Dr
(774)	Casualty and other reserves	5,222,853	1,335,714	6,558,567	—	6,558,567
	Total reserves	5,334,469	881,227	6,215,696	—	6,215,696
	OTHER LIABILITIES AND DEFERRED CREDITS					
(782)	Other liabilities	81,870	355,789	437,659	—	437,659
(784)	Other deferred credits	1,200,393	2,830,946	4,031,339	—	4,031,339
(785)	Accrued depreciation—Leased property	191,671	9,597	201,268	—	201,268
	Total other liabilities and deferred credits	1,473,934	3,196,332	4,670,266	—	4,670,266
	SHAREHOLDERS' EQUITY					
	Capital stock:					
(791)	Capital stock issued or nominally issued and reserved for stock options—Total	97,979,000	97,390,786	195,369,786	(20,603,886)	174,765,900
	Reserved for Restricted Stock Option Plans—Total	1,235,160	2,039,625	3,274,785	(200,725)	3,074,060
	Outstanding—Total	96,743,840	95,351,161	192,095,001	(20,403,161)	171,691,840
	Seaboard Air Line Railroad Company:					
	Common—$20 par value (4,898,950 shares issued, less 61,758 shares reacquired and held in treasury)	96,743,840	—	96,743,840	—	96,743,840
	Proposed additional shares to effectuate merger:					
	Common—$20 par value (3,839,345 shares issued or nominally issued, less 91,945 shares nominally issued and reserved for stock options)	—	—	—	74,948,000	74,948,000
	Atlantic Coast Line Railroad Company:					
	Common—without par value (2,700,481 shares issued or nominally issued, less 64,750 shares nominally issued and reserved for stock options)	—	95,195,761	95,195,761	(95,195,761)	—
	Preferred—$100 par value (1,554 shares issued)	—	155,400	155,400	(155,400)	—
	Total capital stock outstanding	96,743,840	95,351,161	192,095,001	(20,403,161)	171,691,840
	Capital surplus:					

SEABOARD AIR LINE RAILROAD COMPANY
INCOME STATEMENT

		1955	1956	1957	1958	1959	Eight Months Ended August 31, 1960
	I. OPERATING INCOME						
	RAILWAY OPERATING INCOME						
501	Railway operating revenues	$156,609,690	$164,145,652	$165,428,411	$154,790,267	$161,440,939	$107,862,124
531	Railway operating expenses	112,781,410	121,761,760	124,381,658	123,102,809	122,226,391	83,396,721
	Net revenue from railway operations	43,828,280	42,383,892	41,046,753	31,687,458	39,214,548	24,465,403
532	Railway tax accruals	16,110,316	16,797,831	17,123,257	11,490,734	17,600,553	10,735,130
	Railway operating income	27,717,964	25,586,061	23,923,496	20,196,724	21,613,995	13,730,273
	RENT INCOME						
504	Rent from locomotives	44,762	35,299	32,606	44,936	59,620	46,736
505	Rent from passenger-train cars	1,537,368	1,818,645	1,791,587	1,665,106	1,686,920	1,185,016
506	Rent from floating equipment	3,120	—	—	—	—	—
507	Rent from work equipment	20,591	20,621	43,217	33,077	25,374	40,913
508	Joint facility rent income	59,161	66,040	72,045	88,001	77,725	46,800
	Total rent income	1,665,002	1,940,605	1,939,455	1,831,120	1,849,639	1,319,465
	RENTS PAYABLE						
536	Hire of freight cars—Debit balance	2,815,351	2,434,680	2,313,436	1,659,444	2,380,415	2,404,806
537	Rent for locomotives	182	332	236	421	178	13,505
538	Rent for passenger-train cars	1,499,822	1,492,276	1,553,189	1,450,537	1,508,841	995,160
540	Rent for work equipment	1,142	3,243	1,383	2,646	3,579	1,729
541	Joint facility rents	380,334	404,288	421,585	448,600	492,699	321,600
	Total rents payable	4,696,831	4,334,819	4,289,829	3,561,648	4,385,712	3,736,800
	Net rents—Debit	3,031,829	2,394,214	2,350,374	1,730,528	2,536,073	2,417,335
	Net railway operating income	24,686,135	23,191,847	21,573,122	18,466,196	19,077,922	11,312,938
	II. OTHER INCOME						
510	Miscellaneous rent income	233,077	238,973	229,489	280,746	296,482	185,000
511	Income from nonoperating property	107,623	103,164	127,217	232,610	266,664	139,000
513	Dividend income	94,787	132,914	147,546	185,032	167,571	48,495
514	Interest income	558,302	730,260	794,991	694,105	832,572	629,453
516	Income from sinking and other reserve funds	7,328	9,191	29,568	8,163	44,451	49,985
519	Miscellaneous income	1,439	4,074	84,790	903,780	812,516	355,619
	Total other income	1,002,556	1,218,576	1,413,601	2,304,436	2,420,256	1,407,552
	Total income	25,688,691	24,410,423	22,986,723	20,770,632	21,498,178	12,720,490
	III. MISCELLANEOUS DEDUCTIONS FROM INCOME						
543	Miscellaneous rents	3,821	29,058	22,257	4,284	4,215	3,448
551	Miscellaneous income charges	22,106	20,641	113,233	1,156,593	126,306	131,489
	Total miscellaneous deductions	25,927	49,699	135,490	1,160,877	130,521	134,937
	Income available for fixes charges	25,662,764	24,360,724	22,851,233	19,609,755	21,367,657	12,585,553
	IV. FIXED CHARGES						
542	Rent for leased roads and equipment	$ 381,154	$ 389,742	$ 395,352	$ 406,792	$ 410,806	$ 281,195
546	Interest on funded debt:						
	(a) Fixed interest not in default	3,350,046	3,482,036	3,615,234	3,912,026	3,770,668	2,588,039
548	Amortization of discount on funded debt	117,905	134,324	146,166	158,940	153,511	102,667
	Total fixed charges	3,849,105	4,006,102	4,156,752	4,477,758	4,334,985	2,971,901
	Net income after fixed charges	21,813,659	20,354,622	18,694,481	15,131,997	17,032,672	9,613,652
	VI. DISPOSITION OF NET INCOME						
552	Income applied to sinking and other reserve funds	1,703,375	1,703,375	1,512,208	—	—	—
	Total appropriations of income	1,703,375	1,703,375	1,512,208	—	—	—
602	Balance of income transferred to Retained Income—Unappropriated	$ 20,110,284	$ 18,651,247	$ 17,182,273	$ 15,131,997	$ 17,032,672	$ 9,613,652

	Common—[illegible] par value ([illegible] shares issued or nominally issued, less 91,945 shares nominally issued and reserved for stock options)	—	—	—	74,948,000	74,948,000
	Atlantic Coast Line Railroad Company:					
	Common—without par value (2,700,481 shares issued or nominally issued, less 64,750 shares nominally issued and reserved for stock options)	—	95,195,761	95,195,761	(95,195,761)	—
	Preferred—$100 par value (1,554 shares issued)	—	155,400	155,400	(155,400)	—
	Total capital stock outstanding	96,743,840	95,351,161	192,095,001	(20,403,161)	171,691,840
	Capital surplus:					
(795)	Paid-in surplus	—	5,360	5,360	—	5,360
(796)	Other capital surplus	200,561	9,550,897	9,751,458	20,403,161	30,154,619
	Total capital surplus	200,561	9,556,257	9,756,818	20,403,161	30,159,979
	Retained income:					
(797)	Retained income — Appropriated	1,235,160	—	1,235,160	—	1,235,160
(798)	Retained income — Unappropriated	131,133,065	241,465,625	372,598,690	—	372,598,690
	Total retained income	132,368,225	241,465,625	373,833,850	—	373,833,850
	Total shareholders' equity	229,312,626	346,373,043	575,685,669	—	575,685,669
	TOTAL LIABILITIES AND SHAREHOLDERS' EQUITY	$378,803,023	$561,067,647	$939,870,670	$ —	$939,870,670

( ) Denotes reduction

SEABOARD AIR LINE RAILROAD COMPANY

RETAINED INCOME—UNAPPROPRIATED

	1955	1956	1957	1958	1959	Eight Months Ended August 31, 1960
Balance at beginning of year	$ 85,262,826	$ 96,478,303	$105,955,153	$114,105,530	$118,723,326	$126,299,432
Credit balance transferred from income	20,110,284	18,651,247	17,182,273	15,131,997	17,032,672	9,613,652
Miscellaneous credits:						
Federal income tax credit referable to years 1956 and 1957 in respect of 30% depreciation reserve	—	—	—	1,200,000	—	—
Credits from sales or retirement of property	85,004	374,430	1,215,408	—	—	—
Excess over par value of stock sold to optionees	77,820	102,376	20,798	54,520	23,807	8,422
Differences between par value and cost of own securities purchased	21,628	24,441	47,411	—	—	—
Acquisition of ½ interest in properties of Wilmington Ry. Bridge Co.	—	—	144,860	—	—	—
Other	15,110	16,311	13,475	—	—	—
Federal income taxes assigned to retained income	—	—	—	61,931	—	—
Total	105,572,672	115,647,108	124,579,378	130,553,978	135,779,805	135,821,506
Appropriations released	(2,286,910)	(2,470,135)	(1,834,375)	(1,013,655)	(178,000)	(47,860)
Dividends	11,254,800	11,936,728	12,007,686	9,631,666	9,658,373	4,838,301
Miscellaneous Debits:						
Losses from sales or retirement of property	41,306	40,161	118,363	—	—	—
Write off advances to Wilmington Ry. Bridge Co.	—	—	150,809	—	—	—
Reserve for past service liability under Funded Pension Plan (MD&S)	—	179,620	—	—	—	—
Other	85,173	5,581	31,365	—	—	—
Elimination due to acquisition of properties of MD&S R.R. Co.	—	—	—	3,212,641	—	—
Total	9,094,369	9,691,955	10,473,848	11,830,652	9,480,373	4,788,441
Balance at end of period	$ 96,478,303	$105,955,153	$114,105,530	$118,723,326	$126,299,432	$131,133.085

( ) Denotes Credit.

ATLANTIC COAST LINE RAILROAD COMPANY

INCOME STATEMENT

	1955	1956	1957	1958	1959	Eight Months Ended August 31, 1960
I. OPERATING INCOME						
Railway Operating Income						
501 Railway operating revenues	$165,258,279	$174,039,573	$170,456,755	$156,617,500	$162,468,145	$111,842,782
531 Railway operating expenses	137,326,951	147,602,091	142,766,547	128,862,655	131,109,910	89,383,564
Net revenue from railway operations	27,931,328	26,437,482	27,690,208	27,754,845	31,358,235	22,459,218
532 Railway tax accruals	11,515,000	13,815,000	14,780,000	13,205,000	15,200,000	11,050,000
Railway operating income	16,416,328	12,622,482	12,910,208	14,549,845	16,158,235	11,409,218
Rent Income						
504 Rent from locomotives	144,020	139,304	180,694	312,779	212,842	141,645
505 Rent from passenger-train cars	3,127,034	3,155,744	3,103,429	2,535,990	2,442,857	1,752,562
507 Rent from work equipment	24,387	10,982	11,684	13,278	11,809	3,580
508 Joint facility rent income	857,959	883,686	967,679	927,811	906,262	487,679
Total rent income	4,153,400	4,189,716	4,263,486	3,789,858	3,573,770	2,385,466
Rents Payable						
536 Hire of freight cars-Debit balance	3,397,033	3,162,282	3,812,878	5,932,866	6,722,784	5,271,600
537 Rent for locomotives	57,571	47,273	50,377	115,268	120,309	89,364
538 Rent for passenger-train cars	2,708,745	2,781,866	2,675,832	2,270,858	2,289,968	1,618,094
540 Rent for work equipment	3,931	1,969	1,570	4,089	5,371	444
541 Joint facility rents	560,567	587,486	609,396	599,698	605,802	388,036
Total rents payable	6,727,847	6,580,876	7,150,053	8,922,779	9,744,234	7,367,538
Net rents-Debit	2,574,447	2,391,160	2,886,567	5,132,921	6,170,464	4,982,072
Net railway operating income	13,841,881	10,231,322	10,023,641	9,416,924	9,987,771	6,427,146
II. OTHER INCOME						
509 Income from lease of road and equipment	$ 1,372	$ 1,372	$ 1,338	$ 1,372	$ 1,372	$ 1,217
510 Miscellaneous rent income	375,967	390,517	444,919	452,471	488,931	343,068
511 Income from nonoperating property	346,488	501,167	319,335	296,175	315,900	196,712
512 Separately operated properties—Profit	2,473,952	3,939,170	2,997,964	2,580,080	2,583,480	1,140,609
513 Dividend income	4,299,412	4,361,098	4,380,926	4,413,438	4,415,947	2,991,380
514 Interest income	529,466	353,539	355,316	305,403	461,193	588,310
516 Income from sinking and other reserve funds	138,711	75,798	76,693	74,134	84,125	16,937
519 Miscellaneous income	17,766	34,658	19,301	863,073	1,251,814	541,527
Total other income	8,183,134	9,657,319	8,595,792	8,986,146	9,602,762	5,819,760
Total income	22,025,015	19,888,641	18,619,433	18,403,070	19,590,533	12,246,906
III. MISCELLANEOUS DEDUCTIONS FROM INCOME						
543 Miscellaneous rents	6,516	6,032	9,908	10,805	8,740	11,829
544 Miscellaneous tax accruals	145,747	121,609	128,411	129,262	134,194	19,945
551 Miscellaneous income charges	39,287	79,598	74,778	402,805	324,422	206,242
Total miscellaneous deductions	191,550	207,239	213,097	542,872	467,356	238,016
Income available for fixed charges	21,833,465	19,681,402	18,406,336	17,860,198	19,123,177	12,008,890
IV. FIXED CHARGES						
542 Rent for leased roads and equipment	249,455	249,629	249,629	249,168	248,567	165,156
546 Interest on funded debt:						
(a) Fixed interest not in default	7,109,052	6,936,186	7,225,706	7,076,233	6,744,139	4,711,540
547 Interest on unfunded debt	12,014	120	373	17	—	—
548 Amortization of discount on funded debt	31,644	32,244	36,079	33,752	31,900	—
Total fixed charges	7,402,165	7,218,179	7,511,787	7,359,170	7,024,606	4,876,696
Income after fixed charges	14,431,300	12,463,223	10,894,549	10,501,028	12,098,571	7,132,194
V. OTHER DEDUCTIONS						
546 Interest on funded debt						
(c) Contingent interest	5	—	—	—	—	—
Total other deductions	5	—	—	—	—	—
Net income after fixed charges and other deductions	14,431,295	12,463,223	10,894,549	10,501,028	12,098,571	7,132,194

IV. FIXED CHARGES						
542 Rent for leased roads and equipment	249,455	249,629	249,629	249,168	248,567	165,156
546 Interest on funded debt:						
(a) Fixed interest not in default	7,109,052	6,936,186	7,225,706	7,076,233	6,744,139	4,711,540
547 Interest on unfunded debt	12,014	120	373	17	—	—
548 Amortization of discount on funded debt	31,644	32,244	36,079	33,752	31,900	—
Total fixed charges	7,402,165	7,218,179	7,511,787	7,359,170	7,024,606	4,876,696
Income after fixed charges	14,431,300	12,463,223	10,894,549	10,501,028	12,098,571	7,132,194
V. OTHER DEDUCTIONS						
546 Interest on funded debt						
(c) Contingent interest	5	—	—	—	—	—
Total other deductions	5	—	—	—	—	—
Net income after fixed charges and other deductions	14,431,295	12,463,223	10,894,549	10,501,028	12,098,571	7,132,194
VI. DISPOSITION OF NET INCOME						
552 Income applied to sinking and other reserve funds	$ 1,753,589	$ 1,513,794	$ 1,358,039	$ —	$ —	$ —
Total appropriations of income	1,753,589	1,513,794	1,358,039	—	—	—
602 Balance of income transferred to Retained Income—Unappropriated	$ 12,677,706	$ 10,949,429	$ 9,536,510	$ 10,501,028	$ 12,098,571	$ 7,132,194

ATLANTIC COAST LINE RAILROAD COMPANY
RETAINED INCOME—UNAPPROPRIATED

	1955	1956	1957	1958	1959	Eight Months Ended August 31, 1960
Balance at beginning of year	$208,175,842	$216,857,342	$224,635,757	$230,172,036	$232,598,163	$238,686,610
Credit balance transferred from income	12,677,706	10,949,429	9,536,510	10,501,028	12,098,571	7,132,194
Miscellaneous credits:						
Credits from sales or retirement of property	113,884	160,443	261,901	—	—	—
Difference between par value and cost of own securities purchased	1,655	5,726	66,620	—	—	—
Est. Frt. Rev. earned in Dec. 1957 not accounted for	—	—	795,000	—	—	—
Elimination of Fire Ins. Fund Reserve—funds transferred to Treasurer	—	—	—	—	—	763,547
Transfer of Fire Insurance Fund earnings from Retained Income—Appropriated	—	—	—	—	—	331,727
Other	33,082	37,785	77,293	—	—	49,770
Federal income taxes assigned to retained income	—	—	—	—	382,393	983,157
Total	221,002,169	228,010,725	235,373,081	240,673,064	245,079,127	247,947,005
Losses on sales or retirement of property	531,788	38,220	82,083	—	735,371	1,191,417
Loss on sale of investment securities	—	—	—	—	—	1,220,446
Appropriations for sinking and other reserve funds	—	—	—	1,283,040	—	—
Miscellaneous debits:						
Est. liability for unsettled L&D claims at 12/31/57	—	—	875,000	—	—	—
Est. liability for unsettled equip. rents at 12/31/57	—	—	687,000	—	—	—
Transfer to "Capital Stock" in merger of C&WC Ry. Co.	—	—	—	—	504,126	—
Other	97,754	84,432	57,384	42,569	—	116,748
Appropriations released	(1,433,136)	(1,696,016)	(1,449,754)	(1,283,040)	(1,283,040)	—
Dividends:						
Paid on Coast Line stock	$ 4,948,332	$ 4,948,332	$ 4,948,332	$ 4,948,332	$ 6,217,660	$ 3,952,769
Paid in cash on C&WC stock	—	—	—	84,000	218,400	—
Stock dividend on C&WC stock (2½ shares for 1 share) declared April 17, 1958	—	—	—	3,000,000	—	—
Total	4,144,827	3,374,968	5,201,045	8,074,901	6,392,517	6,481,380
Balance at end of period	$216,857,342	$224,635,757	$230,172,036	$232,598,163	$283,686,610	$241,465,625

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Finance Docket No. 21215
Appendix "E"

PROSPECTIVE DIRECTORS

Directors Merged Company	Seaboard	Coast Line	ACL Company	Mercantile
George D. Aldrich		D		
Linton E. Allen		D		
Hyman L. Battle		D		
Kenneth E. Black		D		
Henry C. Breck	D-E			
Daniel L. Brown	D			
Thos. B. Butler (1)		D-E*	D-VP-E*	D-P
Paul F. Clark	D-E			
Alexander E. Duncan (2)		D	D	D
Armand G. Erpf	D-E			
W. Howard Frankland		D		
Bradley Gaylord		D		
Fred N. Harrison	D			
Robert Lassiter, Jr.	D*			
J. T. Lykes	D			
Geo. W. McCarty	D			
Wm. F. Morton	D-E			
Prime F. Osborn		D-VP		
W. T. Rice (2)		P-D-E	D	
Edward C. Roe	D			
Luford Scott (2)		D		
		[2]		
Henry O. Shaw	D-E			
John W. Smith	P-D-E			
Samuel H. Swint		D		
L. L. M. Wiggins (2)		D*(3)-E*	D-P	
H. C. Wright	D			

Symbols: D—Director E—Executive Committee
P—President VP—Vice President
*—Chairman

Notes: (1) Also director and executive committee chairman of Louisville & Nashville RR Co.
(2) Also director or officer of Louisville & Nashville RR Co.
(3) Retired effective April 1, 1961.

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APPENDIX "F"

COAST LINE'S OUTSTANDING MORTGAGES

Mortgage descriptions	Dates of issue and maturity	Interest rate	Amount to assume as of 3/31/1960
Coast Line			
General Unified (1)			
series A bonds	6- 1-1914 6- 1-1964	4½ %	$133,167,000(*)
series B bonds	6- 1-1914 6- 1-1964	4%	72,000(#)
General Mortgage (2)			
series A bonds	3- 1-1950 3- 1-1980	4%	23,255,000
series B bonds	6-30-1952 6-30-1972	4¼ %	17,778,000
series C bonds	7- 1-1952 7- 1-1972	4¼ %	16,125,000
series D bonds	3- 1-1955 3- 1-1980	3⅝ %	12,751,000
series X bonds	8- 1-1952 8- 1-2002	5%	21,950,000(†)
C&WC Ry Co.			
First Cons'ldtd (3) series A bonds	1-1-14 1-1-64	5%	1,589,000
series B bonds	1-1-14 1-1-64	5%	2,779,151(ø)
series C bonds	1-1-14 1-1-64	4¼ %	3,195,000

Main and branch lines encumbered as of December 31, 1959

(1) 4,240 miles.

(2) 580 miles, also 4,240 miles subject to prior lien of General Unified Mortgage.

(3) 341 miles.

(*) Includes $100,416,000 bonds pledged under General Mortgage, and $575,000 deposited under terms of lease of Georgia Rail Road.

(#) Includes $32,000 bonds pledged under General Mortgage.

(†) Includes $9,665,000 bond pledged for bank loans, and $12,285,000 bonds held in Coast Line treasury.

(ø) Includes $2,779,151 bonds held in Coast Line treasury.

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Finance Docket No. 21215

Appendix "F"

COAST LINE'S CONTINGENT LIABILITIES

Parties principally and primarily liable.	Obligation and maturity date.	Amount of contingent liability.
Winston-Salem Southbound Ry.	First mtg. 4% bonds due 7-1-60	$ 5,000,000(*)
Richmond Terminal Ry Co.	First mtg. 3⅜% bonds due 9-1-65	2,552,000(*)
Carolina Clinch & Ohio Ry	First mtg. 4% bonds due 9-1-65	18,000,000(*)
Jacksonville Terminal Co.	First mtg. 3⅜% bonds due 12-1-77	3,764,000(*)
Clinchfield RR Co.	Equipment Trust Ctfs series C, 2⅜% due serially to 11-1-63	352,000(#)
Clinchfield RR Co.	Cond. sale agreements 2.75% to 4.45% final maturity 3-15-74	11,186,632(#)
Georgia RR	Cond. sale agreements 2.25% to 4.1% final maturity 5-1-73	2,447,826(#)
Atlanta & West Point RR	Cond. sale agreements 2.4% to 3.35% final maturity 3-1-71	892,367(#)
Norfolk & Portsm Belt L RR	Cond. sale agreement 3⅝% final maturity 6-1-71	92,799(ø)

(*) Joint and several guaranty of principal, interest, and sinking fund payments.

(#) Joint and several guaranty of principal and interest.

(ø) Several guaranty of ⅛ of principal and interest by each guarantor.

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APPENDIX "G"

MERCANTILE'S OWNERSHIP OF STOCK OF APPLICANTS — JULY 13, 1960

		Nature of Holdings				
		Sole Trustee	Co-Trustee	Guardian, Executor	Owner's Agent	Ben'fcl Owner
ACL company	(1)	336,293	13,081	2,053	38,942	4,725
	(2)	124	34	6	54	(s)
	(3)	47.7%	1.8%	0.3%	5.5%	0.7%
Coast Line	(1)	112,415	11,831	180	20,703	30(*)
	(2)	107	27	1	34	(s)
	(3)	4.3%	0.4%	—	0.8%	—
Seaboard	(1)	7,977	2,254	10,000	9,083	—
	(2)	35	11	1	26	
	(3)	0.2%	—	0.2%	0.2%	
Merged co.	(1)	167,606	19,054	10,256	38,481	90
	(2)	142	38	2	58	(s)
	(3)	1.9%	0.2%	0.1%	0.4%	—

NOTES:
(1) Number of shares
(2) Number of trust accounts
(3) Percentage ratio of total shares outstanding
(*) Coast Line's original preferred stock
(s) Self

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Appendix "H"

Estimated Savings and Net Cash Requirements

Title of Study	Final Savings (Losses underlined)	Final Net Cash (Losses underlined)
Consolidation of stations and terminals	$ 4,485,990	$17,205,706
Elimination of duplicate lines	7,465,784	20,272,546
Consold'n of lines retained	5,126,236	1,869,457
Duplicate freight train service	1,413,986	—
Duplicate passenger train service	1,234,255	—
Consold'n of offices, departments, and divisions including off-line offices	10,266,559	—
Use of shorter or more economical routes	2,553,135	—
Solicitation of freight for longer hauls	4,910,396	—
Adverse routing of freight by shippers or competing lines	995,166	—
Increased costs under labor contracts		
A. Allowance payments	359,546	7,190,923
B. Equalization payments	1,200,000	—
Handling of less-carload freight	85,658	—
Pooling of equipment		
A. Freight train cars	816,197	—
B. Locomotives	736,937	1,461,643
C. Passenger train cars	314,026	96,315
D. Work Equipment	297,800	470,861
Consolidation of heavy repair facil'ts	2,228,665	922,842
Materials and supplies invent's	790,012	6,171,930
Property taxes	1,000,000	—
Fringe benefits to non-contract employees	302,000	—
Other revenues including rentals, etc.	136,300	—
Total gains or savings	$38,732,624	$ 1,284,367

Note: As of January 1, 1960, before Federal and State income taxes.

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Finance Docket No. 21215

Appendix "I"

ABANDONMENTS RECOMMENDED

Line or Portion	Mileage Affected (miles)	Revenues Lost ($)	Cash Required or Realized ($)	Annual Net Savings ($)
Bellwood-Ryan, Va.	12.37 (S)	—	674,945	13,085
Portsmouth-Suffolk, Va.	11.26 (S)	796	196,284	43,539
Suffolk, Va.-Ahoskie, N. C.	36.11 (C)	55,412	736,211	238,621
Franklin, Jct.-Franklin, Va.	18.21 (C)	—	332,469	57,294
Kelford-Tarboro, N. C.	26.81 (C)	1,739	823,440	151,866
Manchester-Jonesboro, N. C.	20.53 (C)	1,618	220,989	81,172
Acme-Navassa, N. C.	1.69 (C) 13.08 (S)	—	121,226	75,114
Hope Mills-Lumberton, N. C.	23.56 (C)	4,642	295,710	56,804
Rockingham, N. C. Bennettsville, S. C.	23.89 (C)	1,944	157,633	29,662
Wadesboro, N. C.-Cheraw, S. C.	21.27 (C)	5,932	443,673	156,964
Red Springs, N. C. McColl, S. C.	21.10 (C)	5,992	243,207	223,319
Florence-Hartsville, S. C.	9.17 (C) 18.76 (S)	245	251,341	120,363
Bishopville-Sumter, S. C.	20.16 (S)	1,658	159,796	54,827
Charleston, S. C. Bridge Jct., Ga.	86.18 (S)	37,430	3,506,223	896,771
McCormick-Calhound Falls, Ga.	20.23 (C)	2,249	431,483	100,170
Jesup-Folkston, Ga.	53.23 (C)	10,415	2,548,495	460,448

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Finance Docket No. 21215

Appendix "I"

ABANDONMENTS RECOMMENDED

Line or Portion	Mileage Affected (miles)	Revenues Lost ($)	Cash Required or Realized ($)	Annual Net Savings ($)
Abbeville-Fitzgerald, Ga.-	18.94 (S)	40,640	106,047	105,251
Lumpkin, Ga.-Montgomery, Ala.	96.42 (S)	91,557	2,039,568	518,160
Lake City Jct.-Lake City, Fla.	17.54 (C)	100	211,077	71,729
Climax, Ga.-Chattahoochee, Fla.	29.33 (C)	3,081	350,664	169,169
Starke-Buda, Fla.	26.82 (S)	—	386,687	114,772
High Springs-Burnett's Lake, Fla.	7.26 (C)	174	123,999	41,786
Newberry-Archer, Fla.	9.94 (C)	—	308,700	48,228
Rochelle-Hawthorne, Fla.	10.64 (C)	—	107,659	48,974
Proctor-Citra, Fla.	6.00 (C)	—	44,714	18,840
Archer-N. Inverness, Fla.	7.77 (C) 44.70 (S)	12,201	696,833	302,860
Weirsdale-Maricamp, Fla.	17.19 (C)	—	284,460	243,554
Leesburg-Fort Mason, Fla.	13.14 (C)	63	163,678	141,791
Okahumpa-Center Hill, Fla.	9.49 (C)	—	126,603	34,050
Webster-St. Catherine, Fla.	4.91 (C)	—	4,649	71,277
Mabel-Drexel, Fla.	41.71 (C)	372	887,021	393,141
Citrus Park-Tacony, Fla.	14.74 (S)	—	33,217	42,105

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Finance Docket No. 21215

Appendix "I"

ABANDONMENTS RECOMMENDED

Line or Portion	Mileage Affected (miles)	Revenues Lost ($)	Cash Required or Realized ($)	Annual Net Savings ($)
Woods-Victor, Fla.	1.97 (S)	—	28,385	6,255
Owensboro-Zephyrhills, Fla.	12.95 (S)	—	253,651	124,875
Plant City-Uceta, Fla.	11.22 (C)	7,549	457,936	85,613
Henderson-Temple Ter. Jct., Fla.	3.97 (C) (*)	20	315,316	25,831
Parrish-Palmetto Jct., Fla.	9.48 (S)	—	146,001	101,716
Palmetto-Sarasota, Fla.	7.47 (C) 2.94 (S)	—	396,246	186,786
Ellsworth, Jct.-Oakland, Fla.	23.64 (S)	2,974	327,732	124,461
Waits Jct.-Clermont, Fla.	4.95 (S)	—	80,255	15,459
Oakland-Clarcona, Fla.	7.40 (C)	—	94,381	27,589
Apopka-Clarcona, Fla.	3.52 (C)	—	26,611	9,073
Orlando-Aloma, Fla.	4.53 (S)	—	74,026	42,182
Mountain Lake-Mammoth, Fla.	7.03 (C)	—	147,782	86,664
Avon Park-Sebring, Fla.	5.02 (C)	—	86,383	17,544
Brewster-Carr, Fla.	48.46 (S)	669	507,474	255,921
Pebble Phosphate Dist., Fla.	23.64 (C) 5.25 (S)	—	907,077	929,601

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Finance Docket No. 21215

Appendix "I"

ABANDONMENTS RECOMMENDED

Line or Portion	Mileage Affected (miles)	Revenues Lost ($)	Cash Required or Realized ($)	Annual Net Savings ($)
Callahan-Baldwin, Fla.	19.23 (S)	—	,710,663	144,099
Clearwater St. Petersb'g, Fla.	—	—	—	55,350

(S) denotes line of Seaboard.

(C) denotes line of Coast Line.

(*) denotes switching track not included in mileage affected.
Underlining denotes net cash required in addition to value of recovered materials.

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Finance Docket No. 21215

Appendix "J"

Mileage Over Proposed Freight Routes

Terminals (*) From		To	Proposed Route	Present Coast Line	Present Seaboard
Richmond	—	Savannah	496	500	517
		Jacksonville	630	644	653
		Miami	1,026	—	1,036
		Tampa	827	870	844
		Atlanta	583	870	579
		Birmingham	747	993	741
		Montgomery	903	906	852
Savannah	—	Jacksonville	134	144	136
		Miami	530	—	519
		Tampa	331	370	327
		Atlanta	336	370	590
		Birmingham	460	493	752
		Montgomery	407	406	335
Jacksonville	—	Miami	396	—	396
		Tampa	197	239	204
		Atlanta	350	351	726
		Birmingham	473	474	888
		Montgomery	378	387	405
		St. Petersb'g	232	245	257
Miami	—	Tampa	247	—	247
		Atlanta	746	—	1,109
		Birmingham	869	—	1,271
		Montgomery	716	—	769
Tampa	—	Atlanta	547	558	917
		Birmingham	670	681	1,079
		Montgomery	469	525	577

(*) Distances measured from the yards shown in parenthesis:

Richmond	(Acca Yard)
Atlanta	(Hills Park)
Birmingham	(Boyles Yard)
Tampa	(Uceta Yard)

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Finance Docket No. 21215

Appendix "K"

FLORIDA EAST COAST RAILWAY

Predominant Freight Traffic and Revenues

Commodity		1957	1958	1959	1960
Products of agriculture	—cars	35,535	27,417	30,742	29,431
	revenues	$5,321,399	$3,962,447	$4,402,046	$4,173,280
Other products of (1) agriculture	—cars	29,661	29,168	31,467	32,182
	revenues	407,454	371,138	376,392	410,794
Animals and products	—cars	5,842	5,643	6,549	5,673
	revenues	1,156,990	1,040,545	1,111,656	976,382
Products of mines—	cars	61,131	54,955	48,423	44,896
	revenues	4,111,315	3,622,852	3,353,346	2,943,745
Products of forests	—cars	14,714	11,557	11,271	10,738
	revenues	1,802,293	1,500,442	1,462,609	1,292,696
Manufactures and miscellaneous—	cars	83,122	79,158	72,313	66,587
	revenues	15,806,654	14,447,108	12,763,605	11,382,477
Less than carload—	tons	37,619	28,669	24,077	19,172
	revenues	1,095,943	921,164	809,048	645,464

(1) Mostly sugar cane from the eastern shore of Lake Okeechobee to Lake Harbor, thence via Coast Line under transit arrangements to sugar mill at Clewiston, about 8 miles north of Lake Harbor.

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Finance Docket No. 21215

Appendix "L"

STOCK EXCHANGE RATIO FACTORS

Physical Properties — December 31, 1959

Description	Combined Totals	Percent of Totals		Per-share Ratios	
		ACL	SAL	ACL	SAL
Main and branch lines miles operated	9,719.69	57.3	42.7	2.46	1.00
Freight cars owned and leased from others	58,246	51.3	48.7	1.93	1.00
Passenger cars used and leased to others	1,017	55.3	44.7	2.26	1.00
Locomotive units owned and used	1,119	53.0	47.0	2.06	1.00

Investment in Transportation Property Book Value — December 31, 1959

	ACL-C&WC	SAL-MD&S	Total	Percent of Totals	
	(In Thousands of Dollars)			ACL	SAL
Railway property used in transp. service	557,532	534,577	1,092,109	51.1	48.9
Return on average investment—1959	449,802	410,524	860,326	52.3	47.7
Net railway operating income before taxes	12,387	25,969	38,356	32.3	67.7
Percent return before taxes	2.75%	6.33%			

Capitalization — December 31, 1959

Long term debt:					
Bonds, debentures, and notes	113,860	42,304	156,164	72.9	27.1
Equpmt trust ctfs, and cond'tl sales	51,878	65,109	116,987	44.3	55.7
Total long term debt	165,738	107,413	273,151	60.7	39.3
Shareholders equity:					
Preferred stock	155	—	155		
Common stock	94,920	96,696	191,616		
Surplus, etc.	248,621	127,774	376,395		
Total equity	343,696	224,470	568,166	60.5	39.5
Debt plus equity	509,434	331,882	841,317	60.6	39.4
Sh'ldrs equity excluding "Property Acquisition Adjustments"	348,434	307,092	655,526	53.2	46.8

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Appendix "L"

Combined Net Assets — December 31, 1959

	Combined Totals ($000)	Percent of Totals ACL	Percent of Totals SAL	Per-share Ratios ACL	Per-share Ratios SAL
Net current assets	55,606	62.9	37.1	3.10	1.00
Properties (net)					
Road	529,428	56.3	43.7	2.36	1.00
Equipment	265,562	43.7	56.3	1.42	1.00
General	9,855	82.8	17.2	—	—
Acquisition and other adjustments	(93,846)				
Miscellaneous physical	14,237				
Total net properties	725,236	56.9	43.1	2.41	1.00
Funds, reserves, etc.	(2,255)				
Investments — Other carriers, etc.	81,655	87.5	12.5		
Total Net Assets	841,316	60.6	39.4	2.81	1.00

( )—denotes deductions

Railway Operating Revenues — Freight

(In Thousands of Dollars

	ACL	SAL	Total	% Contributed by ACL	% Contributed by SAL	Contribution Per Share ACL	Contribution Per Share SAL
1959	$135,653	$135,586	$271,239	50.0%	50.0%	1.83	1.00
1958	129,375	130,186	259,561	49.8	50.2		
1957	140,637	139,872	280,509	50.1	49.9		
1956	143,090	137,739	280,829	51.0	49.0		
1955	135,640	131,576	267,216	50.7	49.3		
1954	127,436	127,005	254,441	50.1	49.9		
1953	138,265	132,431	270,696	51.1	48.9		
1952	141,854	135,781	277,635	51.1	48.9		
1951	132,740	125,807	258,547	51.3	48.7		
1950	109,692	112,066	221,758	49.5	50.5		
Average							
3 yrs. 57-59	135,221	135,214	270,435	50.0	50.0	1.83	1.00
5 yrs. 55-59	136,879	134,992	271,870	50.3	49.7	1.85	1.00
10 yrs. 50-59	133,438	130,805	264,243	50.5	49.5	1.87	1.00

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Appendix "L"

Passenger Revenues

	ACL	SAL	Total	% Contributed by ACL	% Contributed by SAL
	(In Thousands of Dollars)				
1959	$14,187	$12,829	$27,016	52.5%	47.5%
1958	15,094	12,763	27,857	54.2	45.8
1957	17,474	13,906	31,380	55.7	44.3
1956	17,369	13,650	31,019	56.0	44.0
1955	16,339	12,511	28,850	56.6	43.4
1954	17,450	11,990	29,440	59.3	40.7
1953	19,743	13,774	33,517	58.9	41.1
1952	21,347	15,219	36,566	58.4	41.6
1951	20,270	14,582	34,852	58.2	41.8
1950	16,557	14,027	30,584	54.1	45.9
Average					
3 yrs. 57-59	15,585	13,166	28,751	54.2	45.8
5 yrs. 55-59	16,093	13,132	29,224	55.1	44.9
10 yrs. 50-59	17,583	13,525	31,108	56.5	43.5

Total Revenues

	ACL	SAL	Total	% Contributed by ACL	% Contributed by SAL	Contribution Per Share ACL	Contribution Per Share SAL
1959	$162,468	$161,441	$323,909	50.2%	49.8%	1.84	1.00
1958	156,618	154,790	311,403	50.3	49.7		
1957	170,457	165,429	335,885	50.7	49.3		
1956	174,039	164,146	338,185	51.5	48.5		
1955	165,258	156,610	321,868	51.3	48.7		
1954	158,617	151,802	310,419	51.1	48.9		
1953	171,518	159,043	330,561	51.9	48.1		
1952	176,474	163,137	339,611	52.0	48.0		
1951	165,682	151,697	317,379	52.2	47.8		
1950	138,568	137,766	276,334	50.1	49.9		
Average							
3 yrs. 57-59	163,181	160,553	323,734	50.4	49.6	1.86	1.00
5 yrs. 55-59	165,768	160,483	326,251	50.8	49.2	1.89	1.00
10 yrs. 50-59	163,970	156,586	320,556	51.2	48.8	1.92	1.00

Expenses — Excluding Depreciation and Retirements

(In Thousands of Dollars)

	ACL	SAL	Total	% of Total ACL	% of Total SAL
1959	$121,105	$111,290	$232,395	52.1%	47.9%
1958	118,011	111,902	229,913	51.3	48.7
1957	132,195	114,315	246,510	53.6	46.4
1956	137,674	112,036	249,710	55.1	44.9
1955	127,318	103,733	231,051	55.1	44.9
1954	122,582	101,664	224,246	54.7	45.3
1953	137,631	105,689	243,320	56.6	43.4
1952	134,202	107,090	241,292	55.6	44.4
1951	125,914	105,200	231,114	54.5	45.5
1950	104,786	93,851	198,637	52.8	47.2
Average					
3 yrs. 57-59	123,770	112,502	236,272	52.4	47.6
5 yrs. 55-59	127,260	110,655	237,915	53.5	46.5
10 yrs. 50-59	126,142	106,677	232,819	54.2	45.8

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Appendix "L"

Depreciation and Retirements
(In Thousands of Dollars)

	ACL	SAL	Total	% of Total ACL	% of Total SAL
1959	$ 10,005	$ 10,936	$ 20,941	47.8%	52.2%
1958	10,852	11,201	22,053	49.2	50.8
1957	10,572	10,067	20,639	51.2	48.8
1956	9,928	9,726	19,654	50.5	49.5
1955	10,009	9,048	19,057	52.5	47.5
1954	10,014	8,994	19,008	52.7	47.3
1953	9,512	8,753	18,265	52.1	47.9
1952	9,710	11,402	21,112	46.0	54.0
1951	7,394	7,399	14,793	50.0	50.0
1950	6,158	6,215	12,373	49.8	50.2
Average					
3 yrs. 57-59	10,476	10,735	21,211	49.4	50.6
5 yrs. 55-59	10,273	10,196	20,469	50.2	49.8
10 yrs. 50-59	9,415	9,374	18,789	50.1	49.9

Total Operating Expenses

	ACL	SAL	Total	% of Total ACL	% of Total SAL
1959	$131,110	$122,226	$253,336	51.8%	48.2%
1958	128,863	123,103	251,966	51.1	48.9
1957	142,767	124,382	267,149	53.4	46.6
1956	147,602	121,762	269,364	54.8	45.2
1955	137,327	112,781	250,108	54.9	45.1
1954	132,596	110,658	243,254	54.5	45.5
1953	147,143	114,442	261,585	56.3	43.7
1952	143,912	118,492	262,404	54.8	45.2
1951	133,308	112,599	245,907	54.2	45.8
1950	110,944	100,066	211,010	52.6	47.4
Average					
3 yrs. 57-59	134,246	123,237	257,483	52.1	47.9
5 yrs. 55-59	137,533	120,850	258,383	53.2	46.8
10 yrs. 50-59	135,557	116,051	251,608	53.9	46.1

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Appendix "L"

Operating Ratio

	Excl Depr. & Ret.		Incl. Depr. & Ret.	
	ACL	SAL	ACL	SAL
1959	74.54%	68.94%	80.70%	75.71%
1958	75.35	72.29	82.28	79.53
1957	77.55	69.10	83.76	75.19
1956	79.11	68.25	84.81	74.18
1955	77.04	66.24	83.10	72.01
1954	77.28	66.97	83.60	72.90
1953	80.24	66.45	85.79	71.96
1952	76.05	65.64	81.55	72.63
1951	76.00	69.35	80.46	74.23
1950	75.62	68.12	80.06	72.63
Average				
3 yrs. 57-59	75.85	70.07	82.27	76.76
5 yrs. 55-59	76.77	68.95	82.97	75.30
10 yrs. 50-59	76.93	68.13	82.67	74.11

Net Revenue from Railway Operations

(In Thousands of Dollars)

				% Contributed by		Share Ratio	
	ACL	SAL	Total	ACL	SAL	ACL	SAL
1959	$31,358	$39,215	$70,573	44.4%	55.6%	1.46	1.00
1958	27,755	31,687	59,442	46.7	53.3		
1957	27,690	41,047	68,737	40.3	59.7		
1956	26,438	42,384	68,822	38.4	61.6		
1955	27,931	43,829	71,760	38.9	61.1		
1954	26,020	41,144	67,164	38.7	61.3		
1953	24,375	44,601	68,976	35.3	64.7		
1952	32,563	44,645	77,208	42.2	57.8		
1951	32,374	39,098	71,472	45.3	54.7		
1950	27,624	37,700	65,324	42.3	57.7		
Average							
3 yrs. 57-59	28,934	37,316	66,250	43.7	56.3	1.42	1.00
5 yrs. 55-59	28,234	39,632	67,866	41.6	58.4	1.30	1.00
10 yrs. 50-59	28,413	40,535	68,948	41.2	58.8	1.28	1.00

Net Railway Operating Income Before Federal Income Taxes

				% Contributed by		Share Ratio	
	ACL	SAL	Total	ACL	SAL	ACL	SAL
1959	$12,387	$25,969	$38,356	32.3%	67.7%	0.87	1.00
1958	11,512	20,352	31,864	36.1	63.9		
1957	13,000	28,509	41,509	31.4	68.6		
1956	12,007	30,002	42,009	28.6	71.4		
1955	14,127	31,382	45,509	31.0	69.0		
1954	12,673	29,700	42,373	29.9	70.1		
1953	10,894	33,562	44,456	24.5	75.5		
1952	19,470	33,526	52,996	36.7	63.3		
1951	19,870	28,604	48,474	41.0	59.0		
1950	17,615	27,070	44,685	39.4	60.6		
Average							
3 yrs. 57-59	12,300	24,943	37,243	33.0	67.0	0.90	1.00
5 yrs. 55-59	12,605	27,243	39,848	31.6	68.4	0.84	1.00

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Finance Docket No. 21215

Appendix "L"

Other Income

(In Thousands of Dollars)

ATLANTIC COAST LINE

	Dividends from L&N	Separately Operated Properties (50% Int.) Clinchfield R. R.	Georgia R. R.
1959	$4,117	$2,690	$ (107)
1958	4,117	2,474	106
1957	4,117	2,971	27
1956	4,117	3,639	300
1955	4,117	2,446	28
1954	4,117	1,878	60
1953	4,117	2,374	513
1952	3,705	3,496	505
1951	3,294	3,782	604
1950	2,898	2,994	660
Average			
3 yrs. 57-59	4,117	2,712	9
5 yrs. 55-59	4,117	2,844	71
10 yrs. 50-59	3,872	2,874	270

Other Income Excluding Above From ACL

	ACL	SAL	TOTAL
1959	$2,902	$2,420	$5,322
1958	2,289	2,304	4,593
1957	1,481	1,413	2,894
1956	1,601	1,219	2,820
1955	1,592	1,002	2,594
1954	1,832	1,191	3,023
1953	1,590	1,068	2,658
1952	1,411	979	2,390
1951	1,112	1,053	2,165
1950	1,328	1,171	2,499
Average			
3 yrs. 57-59	2,224	2,046	4,270
5 yrs. 55-59	1,973	1,671	3,644
10 yrs. 50-59	1,714	1,382	3,096

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PAGE

Finance Docket No. 21215

Appendix "L"

Income Available For Fixed Charges Before Federal Income Taxes

(In Thousands of Dollars)

				Percent Contrbd. by		Contribution Per. Share	
	ACL	SAL	TOTAL	ACL	SAL	ACL	SAL
1959	$21,523	$28,258	$49,781	43.2%	56.8%	1.39	1.00
1958	19,955	21,496	41,451	48.1	51.9		
1957	21,382	29,788	51,170	41.8	58.2		
1956	21,457	31,172	52,629	40.8	59.2		
1955	22,118	32,360	54,478	40.6	59.4		
1954	20,373	30,802	51,175	39.8	60.2		
1953	19,255	34,599	53,854	35.8	64.2		
1952	30,878	34,429	65,307	47.3	52.7		
1951	28,453	29,482	57,935	49.1	50.9		
1950	25,334	28,184	53,518	47.3	52.7		
Average							
3 yrs. 57-59	20,953	26,514	47,467	44.1	55.9	1.44	1.00
5 yrs. 55-59	21,286	28,615	49,901	42.7	57.3	1.36	1.00
10 yrs. 50-59	23,072	30,057	53,129	43.4	56.6	1.40	1.00

	Fixed Charges			Charges Times Earned		
	ACL	SAL	TOTAL	ACL	SAL	Combined
1959	$ 7,024	$ 4,335	$11,359	3.06	6.52	4.38
1958	7,360	4,478	11,838	2.71	4.80	3.50
1957	7,511	4,156	11,667	2.85	7.17	4.39
1956	7,219	4,006	11,225	2.97	7.78	4.69
1955	7,402	3,849	11,251	2.98	8.41	4.84
1954	7,296	3,929	11,225	2.79	7.84	4.56
1953	7,035	4,018	11,053	2.74	8.61	4.87
1952	6,729	*4,022	10,751	4.59	8.56	6.07
1951	5,794	*4,144	9,938	4.91	7.11	5.83
1950	5,029	*4,378	9,407	5.04	6.44	5.69
Average						
3 yrs. 57-59	7,298	4,323	11,621	2.87	6.13	4.09
5 yrs. 55-59	7,303	4,165	11,468	2.91	6.87	4.35
10 yrs. 50-59	6,840	4,132	10,972	3.37	7.28	4.84

*Includes contingent charges.

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Finance Docket No. 21215

Appendix "L"

Balance To Common Before Federal Income Taxes, Depreciation, Amortization, and Retirements (Cash Income)

				% Contributed by		Contribution Per Share	
	ACL	SAL	Total	ACL	SAL	ACL	SAL
1959	$24,495	$34,860	$59,355	41.3%	58.7%	1.29	1.00
1958	23,440	28,219	51,659	45.4	54.6		
1957	24,435	35,698	60,157	40.7	59.3		
1956	24,160	36,891	61,051	39.5	60.5		
1955	24,717	37,559	62,243	39.7	60.3		
1954	23,083	35,868	58,951	39.2	60.8		
1953	21,724	39,334	61,058	35.6	64.4		
1952	33,851	41,148	74,999	45.1	54.9		
1951	30,045	31,988	62,033	48.4	51.6		
1950	26,455	29,270	55,725	47.5	52.5		
Average							
3 yrs. 57-59	24,131	32,926	57,047	42.3	57.7	1.34	1.00
5 yrs. 55-59	24,248	34,645	58,893	41.2	58.8	1.28	1.00
10 yrs. 50-59	25,640	35,083	60,723	42.2	57.8	1.34	1.00

Federal Income Taxes
(In Thousands of Dollars)

	Federal Income Taxes, As Accrued			Reduction In Tax Accrual Because Of Accelerated Amortization		
	ACL	SAL	Total	ACL	SAL	Total
1959	$2,400	$ 6,891	$ 9,291	$ 171	$1,777	$ 1,948
1958	2,095	1,886	3,981	1,243	2,547	3,790
1957	2,976	6,937	9,913	1,649	3,599	5,248
1956	1,776	6,811	8,587	3,397	4,376	7,773
1955	285	6,697	6,982	4,940	5,791	10,731
1954	873	6,476	7,349	4,752	4,981	9,733
1953	(317)	9,368	9,051	3,865	4,311	8,176
1952	6,432	10,166	16,598	3,441	3,414	6,855
1951	8,993	9,077	18,070	1,384	1,910	3,294
1950	7,307	9,297	16,604	22	—	22
Average						
3 yrs. 57-59	2,490	5,238	7,728	1,021	2,641	3,662
5 yrs. 55-59	1,906	5,844	7,750	2,280	3,618	5,898
10 yrs. 50-59	3,282	7,361	10,643	2,486	3,271	5,757

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Appendix "L"

Federal Income Taxes As Accrued Were Reduced By Credits Applicable To Previous Years

	ACL	SAL
1959	$1,944	—
1958	980	360
1957	1,237	230
1956	1,000	700
1955	1,801	700
1954	35	763
1953	1,300	477
1952	—	505
1951	21	23
1950	—	—
Average		
3 yrs. 57-59	1,387	197
5 yrs. 55-59	1,392	398
10 yrs. 50-59	832	376

Common Stock Per-Share Data

	Mean *Market Price		Ratio	**Earned Per Share		Price Earnings Ratio at Mean	
	ACL	SAL	ACL-SAL	ACL	SAL	ACL	SAL
5-18-60	$49¼	$34¼	1.44 - 1				
1960 to 5-18	49	35¼	1.39 - 1				
1959	55⅛	36⅛	1.53 - 1	$4.74	$3.52	11.6x	10.3x
1958	40⅜	30⅜	1.33 - 1	4.04	3.11	9.9	9.8
1957	38⅜	33	1.16 - 1	4.20	3.85	9.1	8.6
1956	53⅝	38⅞	1.38 - 1	4.79	4.20	11.2	9.3
1955	50⅜	38⅝	1.30 - 1	5.60	4.53	9.0	8.5
1954	40¾	30½	1.34 - 1	4.75	4.26	8.6	7.2
1953	33¾	20½	1.65 - 1	4.87	4.45	6.9	4.6
1952	33½	18½	1.81 - 1	7.01	4.03	4.7	4.6
1951	24	11½	2.09 - 1	5.33	3.58	4.5	3.2
1950	18½	7	2.64 - 1	5.17	3.16	3.6	2.2

*Adjusted for splits

**As reported adjusted for splits

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PAGE

Finance Docket No. 21215

Appendix "L"

Recent Market Valuations

	Seaboard Coast Line Combined (In Thousands of Dollars)			Percent SAL	Percent ACL
1958					
First Quarter	$112,383	$ 80,838	$193,221	58.2%	41.8%
Second Quarter	118,850	83,376	202,226	58.8	41.2
Third Quarter(*)	162,892	110,376	273,268	59.6	40.4
Fourth Quarter	178,226	131,787	310,013	57.5	42.5
1959					
First Quarter	182,488	144,450	326,938	55.8	44.2
Second Quarter	190,473	157,275	347,748	54.8	45.2
Third Quarter	174,845	148,176	323,021	54.1	45.9
Fourth Quarter	164,117	142,101	306,218	53.6	46.4
1960					
January	167,791	147,825	315,616	53.2	46.8
February 1-24(#)	169,016	148,014	317,030	53.3	46.7
February 25-29	176,070	126,414	302,484	58.2	41.8
March	169,603	116,613	286,216	59.3	40.7
April	167,840	120,150	287,990	58.3	41.7

(*) Announcement made that merger negotiations being considered—September 29, 1958.

(#) Coast Line stock first sold following "spin-off" of Alico stock—February 25, 1960.

NOTE: Based on 4,898,950 shares of Seaboard stock, and 2,700,481 shares of Coast Line stock.

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PAGE

Finance Docket No. 21215

Appendix "M"

Recorded Items	Seaboard (In Thousands of Dollars)	Coast Line (In Thousands of Dollars)
Net income before amt'z'n credit	15,294	10,457
Less L&N dividends received in excess of $4 per share		533
Adjusted net income before amt'z'n cr.	15,294	9,924
Adjusted Net Working Capital		
Current assets reported Dec. 31, 1959	45,212	52,458
Current liabilities — Dec. 31, 1959	24,562	17,502
Net current assets per balance sheet	20,650	34,956
Adjustments:		
Deduct recorded casualty reserves	1,177	1,307
Deduct vacation accrual (ACL unrecorded)	4,123	5,118
Deduct Federal income tax refund claim for 30 percent depreciation 1956 and 1957	1,200	—
Total deductions	6,500	6,425
Add stock options payments receivable	2,095	2,771
Add insurance and other reserves	60	3,125
Add excess of certain SAL liabilities over same liabilities of ACL	2,014	—
Add funds deposited with mortgage trustee Dec. 31, 1959 being drawn in March 1960	1,639	
Total additions	5,808	5,896
Total net working capital—adjusted	19,958	34,427
Less pension liability	1,777	9,693
Less equipment lease adjustment		3,156
Less Government obligations (income included above in net income)	17,853	8,963
Plus new office bldg. at Jacksonville		3,280
Plus excess value of industrial lands		25,000
Adjusted total net working capital, etc.	328	40,895
Assumed return of 3 percent after Federal income taxes on adjusted net working capital plus excess of industrial lands	10	1,227
Adjusted net income before amt'z'n credit plus added return on adjusted net working capital and excess of industrial lands	15,304	11,151

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INDEX

	Page
Opinions below	1
Jurisdiction	1
Statutes involved	2
Question presented	2
Statement	3
The question is substantial	7
Conclusion	19
Appendix A	20
Appendix B	40
Appendix C	42

CITATIONS

Cases:

Brown Shoe Co. v. *United States*, 370 U.S. 204	3, 7, 8, 14
Marin, County of v. *United States*, 356 U.S. 412	10
McLean Trucking Co. v. *United States*, 321 U.S. 67	7, 8, 10, 11, 12, 13, 14, 15, 16
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Clayton Act,	
Sec. 7	2, 3, 6, 7, 8, 11, 13, 14, 15, 16, 17, 18
Sec. 11	2, 13, 14

Statutes—Continued

	Page
Interstate Commerce Act, 49 U.S.C.	
National Transportation Policy	2
Sec. 5	9, 10, 14, 17
Sec. 5(2)(b)	2, 3, 7
Sec. 5(2)(c)	2, 9
Sec. 5(11)	2, 9, 13, 14
Sherman Act	
Sec. 1	11
Transportation Act of 1920	8
Transportation Act of 1940	9
28 U.S.C. 1336, 1398, 2284 and 2321-2325	1
28 U.S.C. 1253 and 2101(b)	2

In the Supreme Court of the United States

OCTOBER TERM, 1965

No. ——

INTERSTATE COMMERCE COMMISSION, APPELLANT

v.

FLORIDA EAST COAST RAILWAY COMPANY, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA, JACKSONVILLE DIVISION

JURISDICTIONAL STATEMENT

OPINIONS BELOW

The opinion of the district court, reported at 242 F. Supp. 14, is set out in Appendix A, *infra*, pp. 20-39. The report of the Interstate Commerce Commission is printed at 320 I.C.C. 122.

JURISDICTION

This action was instituted under 28 U.S.C. §§ 1336, 1398, 2284, and 2321-2325 to set aside orders of the

Interstate Commerce Commission. The judgment of the lower court, constituted as a three-judge district court (Appendix B, *infra*, pp. 40-41), was entered May 13, 1965, and the Commission filed its notice of appeal on July 12, 1965.

The jurisdiction of this Court to review the judgment of the district court on direct appeal is conferred by 28 U.S.C. §§ 1253 and 2101(b) and is sustained by *United States* v. *Drum*, 368 U.S. 370.

STATUTES INVOLVED

Section 5(2)(b), 5(2)(c) and 5(11) of the Interstate Commerce Act, 49 U.S.C. §§ 5(2)(b), 5(2)(c) and 5(11), the National Transportation Policy, 49 U.S.C. preceding § 1, and sections 7 and 11 of the Clayton Act, 15 U.S.C. §§ 18 and 21, are set forth in Appendix C, *infra*, pp. 42-46.

QUESTION PRESENTED

By its orders set aside by the district court, the Interstate Commerce Commission conditionally approved the proposed merger of the Atlantic Coast Line Railroad Company and the Seaboard Air Line Railroad Company.

A single question is presented by this appeal:

Whether the district court erred in holding that the Commission, in giving weight to the antitrust policy of the Nation in its determination of whether a proposed merger of railroads would be consistent with the public interest under section 5(2)(b) of the Interstate Commerce Act, is required to make findings

as to the probable anticompetitive effect of the merger in terms of the precise language of section 7 of the Clayton Act and upon a market-by-market analysis of the products or services and geographic areas involved, as made in *Brown Shoe Co.* v. *United States*, 370 U.S. 204, and other decisions not involving railroad mergers.

STATEMENT

By joint application filed with the Commission on July 22, 1960, Seaboard Air Line Railroad Company and Atlantic Coast Line Railroad Company sought authorization for their merger, under Section 5(2)(b) of the Interstate Commerce Act.

Following complete administrative proceedings,[1] the Commission, with two Commissioners dissenting, on December 2, 1963, approved the proposed transaction, subject, however, to employee protective and traffic conditions.

In its 117-page report, the Commission undertook a searching analysis of all of the issues posed by the application. 320 I.C.C. 206. Foremost among these was whether the merger would have such anticompetitive consequences as to render impossible the accomodation of section 5(2)(b) and the antitrust legislation. 320 I.C.C. 128-29.

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[1] The hearings lasted 35 days, covering 5,418 pages of transcript. Additionally, 101 statements of witnesses were received as if read into the record, and 271 exhibits, offered in evidence. Argument was had before the entire Commission on May 7 and 8, 1963.

The Commission recognized that the merger of these two railroads, by terminating the competition that had existed between them, would leave a number of communities and a large portion of the State of Florida without the direct service of any other railroad. 320 I.C.C. 163, 211. Nevertheless, effective railroad competition would remain in the area of the Southeastern States, particularly, on traffic from and to the major gateway points, practically all of which are served by the Southern Railway System, and the Commission assured the continued vitality of competitive rail service by the imposition of extraordinary conditions, affording shippers and other railroads routes alternative to those of the merged company. 320 I.C.C. 180, 208, 267.

However, the Commission noted that the need for preserving intramodal rail competition has diminished. 320 I.C.C. 166, 210. The Nation's railroads increasingly are losing traffic to truck, water and other modes of transportation, particularly in the area served by the Seaboard and Coast Line. 320 I.C.C. 149, 210. The Commission found that the applicant railroads, caught between the need for increasing their charges to cover ascending costs and an inability to do so posed by the threat of further traffic diversions, were in need of affecting the economies and efficiencies that their merger would afford. 320 I.C.C. 153, 210.

The Commission found that the merger of the Coast Line and Seaboard would yield to the merged company savings of at least $20 million a year. 320 I.C.C. 159. More importantly, the Commission, 320

I.C.C. 160, found, "As a result of proposed changes in freight train operations and the use of shorter routes, as discussed in detail in the examiner's report, the merged company will provide improved and more expeditious freight schedules between the principal terminals presently served by Seaboard and Coast Line." In addition, the Commission said, "[I]t can be anticipated that benefits will be derived from (1) more flexible schedules and more direct routes; (2) the elimination of interchanges and delays in transit; and (3) the simplification of transit arrangements and greater flexibility in arranging stopoff points. Reduction in shipping costs can be anticipated from the elimination of wasteful and unneeded transport facilities, the substitution of single-line rates on certain commodities, and the elimination of switching charges. A more adequate car supply, the availablity of more specialized equipment, and more efficient utilization of equipment should result." *Id.*

On balance, the Commission decided that authorization of the proposed transaction would be consistent with the public interest. It concluded, 320 I.C.C. 212, "In our determination, we are required to give consideration to the effect that the merger would have upon competitors and on the general competitive situation in the railroad industry in the light of the objectives of the national transportation policy. *McLean Trucking Co.* v. *United States, supra.* We have carefully evaluated the effects of the curtailment of competition that will result from the merger and when considered in connection with the advantages of the merger, including improved service, safer oper-

ations, and lower costs, we are convinced that the advantages of the merger far outweigh the potential disadvantages."

The Florida East Coast Railway Company, one of the railroads claiming to be injured by the merger of the Coast Line and Seaboard, instituted this action on March 18, 1964, following the Commission's partial denial on March 4, 1964, of petitions for reconsideration of its report and order. Southern and the Railway Labor Executives' Association subsequently intervened as parties plaintiff, and Coast Line, Seaboard, the Atlantic Coast Line Company and the Mercantile-Safe Deposit and Trust Company intervened as parties defendant in support of the challenged orders of the Commission. The United States, statutory defendant, confessed error and took the position that the merger of the Coast Line and Seaboard "should be permanently enjoined."

The lower court's decision, from which this appeal is taken, turns, essentially on but a single point—the failure of the Commission "to decide whether or not section 7 of the Clayton Act would be violated by the proposed merger." *Infra*, p. 29; 242 F.Supp. 20. More specifically, the court said, *infra*, pp. 32-33; 242 F.Supp. at 22:

> [W]e hold that the Commission must define the "line of commerce" and the "section of the country" in which to appraise the probable competitive effects of the proposed merger and must determine whether the effect of the merger "may be substantially to lessen competition" or "tend to create a monopoly." The reason the Commission

> must make such findings is, most precisely, the fact that antitrust policy, to be given any effect whatsoever, must be measured in terms of criteria that have been developed by Congress and the courts. If an erroneous statutory construction lies hidden in vague or insufficient findings then important statutory prerequisities to merger may be overlooked. [Footnotes omitted.]

Deeming this Court's decision in *Brown Shoe Co.* v. *United States*, 370 U.S. 294 (1962), to have marked a change in the requirements upon the Commission as enunciated in *McLean Trucking Co.* v. *United States*, 321 U.S. 67 (1944), and *Minneapolis & St. L. Ry. Co.* v. *United States*, 361 U.S. 173 (1959), the district court concluded, *infra*, p. 33; 242 F.Supp. at 22, that "the Commission has failed to make sufficient findings to accomodate section 5 (2) of the Interstate Commerce Act with section 7 of the Clayton Act."

The district court set aside the Commission's orders, declining specifically to pass upon two relatively narrow issues, namely, the adequacy of the labor protective conditions and the status for certain regulatory purposes of the Mercantile-Safe Deposit and Trust Company, a holding company.

THE QUESTION IS SUBSTANTIAL

The court below held that before the Commission may authorize a merger of railroads pursuant to Section 5(2)(b) of the Interstate Commerce Act, it must make findings as to the competitive effects of the proposed merger in terms of the specific criteria of Sec-

tion 7 of the Clayton Act as developed and applied by the courts in non-transportation cases (such as *Brown Shoe Co.* v. *United States*, 370 U.S. 294 (1962) and *United States* v. *Philadelphia National Bank*, 374 U.S. 321 (1963)). In so holding, the court below considered inapposite this Court's decisions in *McLean Trucking Co.* v. *United States*, 321 U.S. 67 (1944) and *Minneapolis & St. Louis R. Co.* v. *United States*, 361 U.S. 173 (1959), that in passing upon proposed carrier unifications the Commission need not apply antitrust criteria to determine whether such transactions, absent its approval, would violate either the Sherman or Clayton Acts. The court below erroneously concluded that such a result was compelled by the 1950 amendment to Section 7, as interpreted by this Court in *Brown Shoe*. Moreover, the lower court's decision can only serve to complicate and prolong the proceedings before the Commission upon applications for approval of any significant railroad merger.

1. Prior to 1920, the railroads were subject to the antitrust laws and it was clear that any unification of major railroads which competed to any significant extent would violate the Sherman Act (*Northern Securities Co.* v. *United States*, 193 U.S. 197 (1904); *United States* v. *Union Pacific R. Co.*, 226 U.S. 61 (1912); *United States* v. *Reading Co.*, 253 U.S. 26 (1920); *United States* v. *Southern Pacific Co.*, 259 U.S. 214 (1922)), to say nothing of Section 7 of the Clayton Act.

This Court has recognized repeatedly that the Transportation Act of 1920 (41 Stat. 456) marked a sharp change in Congressional policy toward the

structure of the railroad industry. "The 1920 Act required the Commission to prepare and adopt a plan for nation-wide consolidations of the railway properties of the country. It made this master plan the governing consideration in approving voluntary consolidations of railroads which were permitted only if in harmony with and in furtherance of the Commission's over-all plans." *Schwabacher* v. *United States*, 334 U.S. 182, 192 (1948). With the failure of the "plan" approach (*id.* at 193), the Transportation Act of 1940 rewrote Section 5 of the Interstate Commerce Act into substantially its present form. Under it, the Commission is authorized to approve a carrier-initiated consolidation if it finds that the proposed transaction, subject to such conditions as it may impose, "will be consistent with the public interest" and upon just and reasonable terms and conditions. Section 5(2)(c) provides that "the Commission shall give weight to the following considerations among others: (1) the effect of the proposed transaction upon adequate transportation service to the public; (2) the effect upon the public interest of the inclusion, or failure to include other railroads in the territory involved * * *; (3) the total fixed charges resulting from the proposed transaction; and (4) the interest of the carrier employees affected." Section 5(11) provides that the participants in a carrier unification approved by the Commission "shall be and they are hereby relieved from the operation of the antitrust laws."

This Court has recognized that "The congressional purpose in the sweeping revision of Section 5 of the Interstate Commerce Act in 1940, enacting Section

5(2)(a) in its present form, was to facilitate merger and consolidation in the national transportation system. * * * The very language * * * expresses clearly the desire of the Congress that the industry proceed toward an integrated national transportation system through substantial corporate simplification." *County of Marin* v. *United States*, 356 U.S. 412, 418-419 (1958).

In *McLean Trucking Co.* v. *United States*, *supra*, involving a consolidation of motor carriers, this Court dealt specifically with the criteria which the Commission is to apply in administering Section 5. From the 1920 shift in Congressional policy, this Court concluded that "The history of the development of the special national transportation policy suggests, quite apart from the explicit provision of Section 5(11), that the policies of the antitrust laws determine 'the public interest' in railroad regulation only in a qualified way," that "there can be little doubt that the Commission is not to measure proposals for all-rail * * * consolidations by the standards of the antitrust laws," and that "in authorizing those consolidations it did not import the general policies of the antitrust laws as a measure of their permissibility." (321 U.S. at 83, 84-85). This Court further emphasized in *McLean* that:

> * * * the Commission has no power to enforce the Sherman Act as such. It cannot decide definitively whether the transaction contemplated constitutes a restraint of trade or an attempt to monopolize which is forbidden by that Act. The Commission's task is to enforce the Interstate Commerce Act and other legislation which deals

> specifically with transportation facilities and problems. That legislation constitutes the immediate frame of reference within which the Commission operates; and the policies expressed in it must be the basic determinants of its action.

At the same time in *McLean* this Court held that the Commission is not to ignore the policy of the antitrust laws, but must:

> * * * consider the effect of the merger on competitors and on the general competitive situation in the industry in the light of the objectives of the national transportation policy.
>
> In short, the Commission must estimate the scope and appraise the effects of the curtailment of competition which will result from the proposed consolidation and consider them along with the advantages of improved service, safer operation, lower costs, etc., to determine whether the consolidation will assist in effectuating the overall transportation policy. Resolving these considerations is a complex task which requires extensive facilities, expert judgment and considerable knowledge of the transportation industry. * * * (321 U.S. at 86-87).

As this Court recognized in *McLean*, its conclusions with respect to a motor carrier merger apply *a fortiori* to a proposed rail merger because of the special Congressional policy of facilitating rail unification.

Fifteen years later, in *Minneapolis & St. Louis R. Co.* v. *United States*, *supra*, 361 U.S. at 186, this Court, with one justice dissenting, in rejecting a claim that an approved rail unification would violate Section 1 of the Sherman Act and Section 7 of the Clay-

ton Act, reaffirmed the entire rationale of *McLean* as stated above, and added that:

> Section 5(11) is both a more recent and a more specific expression of congressional policy than § 1 of the Sherman Act and § 7 of the Clayton Act, and in terms relieves the acquiring carrier, upon approval by the Commission of the acquisition, "from the operation of the antitrust laws. . . ." Although § 5(11) does not authorize the Commission to "ignore" the antitrust laws, *McLean Trucking Co.* v. *United States*, 321 U.S. 67, 80, there can be "little doubt that the Commission is not to measure proposals for [acquisitions] by the standards of the antitrust laws." 321 U.S. at 85-86. * * *

Relying upon *McLean* and *Minneapolis & St. L.*, the Commission made extensive findings as to the competitive consequences of a Seaboard-Coast Line merger upon competing carriers, shippers and localities, but, as in other recent rail unification proceedings, it did not make findings in terms of antitrust violations. The Commission reviewed the competitive situation generally throughout the Southeastern States and gave particular attention in its decision to those areas in which the likely impact would be the greatest. For example, the Commission noted, 320 I.C.C. at 164, that: "The situation at Tampa and in the central and western portions of Florida is unique in that those areas are served by no other railroads except Seaboard and Coast Line." While termed by it a "diminution of competition within the State of

Florida" that would be "largely a matter of degree", the Commission nevertheless recognized that the proposed transaction would result in a "rail monopoly". *Id.* In short, said the Commission, 320 I.C.C. at 166, "There is no question that there will be a significant reduction in rail competition in Florida." The Commission could have added that such substantial lessening of competition alone, would be violative of section 7 of the Clayton Act, but, as the court below admitted, it was not required to do so under this Court's decisions in *McLean* and *Minneapolis & St. L.*

The court below conceded that to hold that the Commission must measure the competitive effects of a rail merger by the specific criteria of Section 7 of the Clayton Act "may seem contrary" to this Court's *McLean* and *Minneapolis & St. L.* decisions (*infra*, p. 26; 242 F. Supp. 19). However, it proceeded to distinguish *McLean* on the ground that the Commission has "no jurisdiction to enforce the proscriptions of the Sherman Act", *id.*, asserting that the Commission's jurisdiction under Section 11 of the Clayton Act to enforce Section 7 "where applicable to common carriers" converted the latter into "an additional 'frame of reference within which the Commission operates' ". *Infra*, p. 28, 242 F. Supp. at 20. *Minneapolis & St. L.*, which considered both the Sherman and Clayton Acts in relation to Section 5(11), was held by the lower court to be inapposite largely on the ground that, although decided in 1959, it did not take into account the 1950 amendment to Section 7 of the Clayton Act which "is later in time" than Sec-

tion 5, and was decided prior to *Brown Shoe Co.*, "the first case to consider the background of the 1950 amendments to section 7 of the Clayton Act." *Infra*, p. 31, 242 F. Supp. at 21.

In thus infusing the market and geographic criteria of Section 7 into proceedings under Section 5 of the Interstate Commerce Act, the court below overlooked the fact that Sections 7 and 11 of the Clayton Act were as applicable as the Sherman Act in *McLean* (as noted by both the lower court in that case, 48 F. Supp. at 935, and by the minority in this Court, 321 U.S. at 93). It speculated that in deciding *Minneapolis & St. L.* in 1959 this Court overlooked the 1950 amendment to Section 7. The lower court overlooked the fact that the 1950 amendment to Section 7 reached only mergers effected by asset acquisitions between corporations "subject to the jurisdiction of the Federal Trade Commission" and simultaneously provided that "Nothing contained in this section shall apply to transactions duly consummated pursuant to authority given by the * * * Interstate Commerce Commission * * *." It wholly ignored the fact that in 1962, with the instant and other major rail unification proposals pending before the Commission, the Congress did not even consider seriously a proposal to subject proposed rail mergers to Section 7. See *Hearings on S. 3097 before a Subcommittee of the Senate Committee on the Judiciary*, 87th Cong., 2d Sess. (1962).

The court below purported to give effect to the express exemption from the antitrust laws conferred by Section 5(11) of the Interstate Commerce Act by

stating that "the Commission with propriety may approve a rail consolidation, otherwise prohibited by the antitrust laws, in order to bring about needed or desirable improvement in service and economies in operation". *Infra*, p. 30, 242 F. Supp. at 21. Nevertheless, we submit that no one can safely assume that the decision below is merely a requirement of additional "findings", leaving uneroded the substantive principle of *McLean* and *Minneapolis & St. L.* A requirement of findings is meaningless unless it involves potential substantive consequences. *Davis, Administrative Law Treatise*, sec. 16.09. Here the court below stated that where a proposed merger would violate Section 7 "the prohibition of the Clayton Act must be given weight." *Infra*, p. 29, 242 F. Supp. at 20. And relying upon the principle that "immunity from the antitrust laws is not lightly implied" (inapposite here where express immunity has been granted), the lower court reasoned that "When an agency, such as the Interstate Commerce Commission, is entrusted by Congress with authority to require compliance with Section 7 of the Clayton Act, and also to grant relief from the operation of the antitrust laws, the logical corollary would be that the Commission will not grant immunity from the antitrust laws unless clearly authorized by the law and required by the evidence."[2] *Id.* At the least, the grudging ap-

[2] A suggestion of substantive implications may also be found in the further statement of the lower court that the Commission must make findings in terms of Section 7 criteria because "If an erroneous statutory construction lies hidden in vague or insufficient findings then important statutory prerequisites to merger may be overlooked". *Infra*, p. 33, 242 F. Supp. 22.

proach of the court below wholly ignores the special Congressional policy toward railroad unification. At the most, it imports the specific criteria of Section 7 into the determination of rail unification problems—in the teeth of this Court's *McLean* and *Minneapolis & St. L.* decisions. Upon any reading, the decision below calls for authoritative determination by this Court of the criteria to be applied in rail unification proceedings.

2. Even if the decision below were regarded as imposing only a requirement as to the kind of findings by which the Commission must measure the competitive consequences of a proposed railroad merger, it has created uncertainty which could have a crushing impact upon administrative proceedings on such merger applications. Whether or not intended by the court below, its decision is open to the construction that in such a proceeding the parties must develop a record which will enable the Commission to make findings identifying every geographic and service market or submarket which the courts might regard as the appropriate "line of commerce" or "section of the country" for the purposes of Section 7 of the Clayton Act. Thus, the court below noted that "It may be that the relevant geographical market is the Southeastern States as a whole, but "under other circumstances it may be as small as a single metropolitan area". *Infra*, pp. 34-35; 242 F.Supp. at 23. It also noted that "It may be that the relevant service market includes modes of transportation other than railroads", but that "it may be that railroads constitute a submarket for the transportation of heavy-

loading, low value bulk commodities due to cost and service advantages available to railroads". *Infra*, pp. 35-36.

However, the decision below leaves wholly uncertain the detail in which applicants and the Commission must identify geographic markets and submarkets in which they compete and in which such markets must be related to service submarkets, or in which they must measure service markets (by commodities) in terms of the "interchangeability of use or the cross-elasticity of demand" between the various rail services of the applicants and those of competing motor and water carriers. Further uncertainty flows from the lower court's holding that "[W]e do not think routing and gateway conditions can be meaningful in terms of the 'public interest' as affected by the Clayton Act unless they are imposed by reference to the product market and the geopraphic market." *Infra*, p. 32, 242 F. Supp. at 21-22. In view of the complex competitive consequences of any significant rail unification, such uncertainty alone constitutes a major impediment to effective implementation of the Congressional policy underlying Section 5 of the Interstate Commerce Act.

3. The concepts of "relevant geographic market" and "relative service market" evolved in industrial merger cases under section 7 of the Clayton Act, moreover, do not lend themselves to translation into meaningful measures of the anticompetitive effects of a railroad merger. The few variables appropriate to a determination of the former become so numerous and complex to render them incomprehensible in an at-

tempted delineation of the latter. The factors of gender, style and price limiting the competition of shoes, for example, are a far cry from the considerations entering into a shipper's choice of competing rail routes, such as the location of his plant in relation to the lines of the railroads, the location of the consignees' plant, the availability of switching services, the charges for switching services, if any, the scheduling of trains, the routing of inbound shipments, the supply of desired cars, the incidence of loss and damage, the provision of transit, reconsignment and other ancillary services, the charges for such services as well as for the line haul, the reciprocity of dealings with the carrier and so on. And whereas the competition for shoes occurs in readily defineable communities or sections of the country, the competition between railroads extends from the hundreds of points that each may serve directly to the thousands of points that it reaches through connecting lines. Moreover, while the customer for shoes cannot practicably substitute another product for them, the user of rail services in most instances can select from among a wide variety of alternative transportation media.

Clearly, undertaking the development and analysis of competitive effects in terms of the industrial merger cases under section 7 of the Clayton Act will prolong and complicate administrative proceedings which are already long and costly by any standard. We submit that this practical impact is far too high a price to be paid for a requirement that the Commission make findings as to the obvious fact that mergers of railroads which compete to any significant extent almost invariably would violate the antitrust laws.

There are now pending before the Commission in various stages such rail unification proposals as Great Northern-Northern Pacific-Burlington, New York Central-Pennsylvania, Union Pacific-Rock Island, and Chicago & Northwestern-Chicago Great Western. Their pendency underscores the need for authoritative determination by this Court of the standards to be appiled by the Commission in measuring the competitive effects of such transaction.

CONCLUSION

This appeal presents a question of substantial importance, and probable jurisdiction should be noted.

Respectfully submitted.

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SEPTEMBER 1965

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

No. 64-64-Civ. J.

FLORIDA EAST COAST RAILWAY COMPANY, a corporation, Florida East Coast Building, St. Augustine, Florida, PLAINTIFF

versus

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, DEFENDANTS

(Filed May 13, 1965, Jacksonville, Fla.)

Before RIVES, *Circuit Judge*, and SIMPSON and MCRAE, *District Judges*.

OPINION

RIVES, *Circuit Judge*:

This is an action to enjoin, annul, and set aside orders of the Interstate Commerce Commission[1] which, subject to routing and gateway conditions and employee protective conditions, authorize the merger of the Atlantic Coast Line Railroad Company into Seaboard Air Line Railroad Company and the related acquisition of control by Seaboard of car-

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[1] See 49 U.S.C. § 17(9); 28 U.S.C. § 2321.

riers subsidiary to or affiliated with Atlantic Coast Line, most prominently including Louisville and Nashville Railroad Company. Florida East Coast Railway Company brought the action against the United States and the Interstate Commerce Commission.[2] Since the Attorney General, representing the United States,[3] opposes the merger, the United States has been realigned as a party plaintiff. Jurisdiction of this court is provided by 28 U.S.C. § 1336, and a district court of three judges has been convened as required by 28 U.S.C. § 2325.

Plaintiff Florida East Coast Railway Company, a Florida corporation, has its principal office at Saint Augustine, Saint Johns County, Florida, which is in the Middle District of Florida. Hence venue is properly laid in the Middle District. See 28 U.S.C. § 1398.

The Railway Labor Executives' Association, the Southern Railway Company, and its affiliated companies in the Southern Railway System intervened as parties plaintiff. The Mercantile-Safe Deposit and Trust Company, the Seaboard Air Line Railroad Company, the Atlantic Coast Line Railroad Company and The Atlantic Coast Line Company intervened as parties defendant in support of the challenged orders of the Commission.

Florida East Coast's motion for an order restraining temporarily the operation and effective date of the orders of the Interstate Commerce Commission, pending the final hearing and determination of the action, see 28 U.S.C. § 2324, was granted by the Honorable Bryan Simpson, Chief Judge, United States District Court for the Middle District

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[2] See 28 U.S.C. §§ 2322, 2323; 49 U.S.C. § 17(9).

[3] See 28 U.S.C. § 2323.

of Florida, based on the specific finding that irreparable damage would result to the plaintiffs if the temporary restraining order was not granted. See 28 U.S.C. §§ 2284(3), 2325.

The Commission stated that the merger it approves[4] would result in the elimination of present competition between Seaboard and Atlantic Coast Line in a six-state area.[5] In the six-state area and in an eight-state area,[6] the merged company would control more than 54 per cent of the total railroad mileage, while the Southern Railway Company, its nearest competitor, would have about 34 per cent. The merged company would have approximately 81 per cent of the railway mileage in Florida. See *Seaboard Air Line R.R.*, 320 I.C.C. 122, 163 (1963). Approximately 4,257 jobs would be abolished and the location of employment would be changed for 4,439 other employees, 320 I.C.C. at 154. The Commission found that: the reduction of rail competition caused by the proposed merger will not be substantial; ample competitive rail service will remain after the merger throughout most of the affected area; and the reduction in competition that will result from the merger will have no appreciable injurious effect upon shippers and communities. 320 I.C.C. at 167. The Commission noted that the merger will have substantial adverse effects upon many railroad employees and their families, but, in the long run, the merger would provide greater job security

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[4] Commissioner Webb, with whom Commissioner Tucker joined, dissented.

[5] The six states are Alabama, Florida, Georgia, North Carolina, South Carolina and Virginia.

[6] The additional states are Tennessee and Kentucky.

and more stabilized conditions of employment for employees of the merged company. See 320 I.C.C. at 200. Both Seaboard Air Line and Atlantic Coast Line are currently in healthy financial condition.

The questions raised in this three-judge district court action deal with the protective conditions for employees and with the relationship between section 5(2)[7] of the Interstate Commerce Act—which authorizes the Commission to approve proposed mergers that are found to be in the "public interest"[8]—and the antitrust laws, more specifically section 7 of the Clayton Act.[9]

Plaintiff Florida East Coast suggests that the ultimate importance of this case is that the Commission has written preservation of competition and prevention of monopoly out of the concept of "public interest."

Section 5(2)(c) of the Interstate Commerce Act, which sets forth certain factors which must be considered by the Commission in passing upon any proposed railroad merger or affiliation, does not expressly require that the Commission consider the antitrust laws as a factor in the public interest. The Commission is required by section 5(2)(c) to

> "give weight to the following considerations, *among others*: (1) The effect of the proposed transaction upon adequate transportation service to the public; (2) the effect upon the public interest of the inclusion, or failure to include,

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[7] 49 U.S.C. § 5(2).

[8] 49 U.S.C. § 5(2)(b); see *e.g.*, Phillips, Railroad Mergers: Competition, Monopoly, and Antitrust, 19 Wash. & Lee L. Rev. 1, 9 (1962).

[9] 15 U.S.C. § 18.

other railroads in the territory involved in the proposed transaction; (3) the total fixed charges resulting from the proposed transaction; and (4) the interest of the carrier employees affected." [10]

However, the Commission has long been required "to give weight to the antitrust policy of the nation before approving mergers and consolidations." [11] The antitrust laws are expressly considered in section 5(11) of the Act which exempts carriers and individuals participating in an approved merger

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[10] 49 U.S.C. § 5(2)(c). (Emphasis added.) The Act of Sept. 18, 1940, ch. 722, tit. I § 1, 54 Stat. 899, which amended the Interstate Commerce Act, set forth the "National Transportation Policy":

> "It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions;—all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. *All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy.*"

49 U.S.C.A. (Historical note following table of contents). (Emphasis supplied.)

[11] Georgia v. Pennsylvania R.R., 1945, 324 U.S. 439, 456.

> "from the operation of the antitrust laws and of all other restraints, limitations, and prohibitions of law, Federal, State or municipal, insofar as may be necessary to enable them to carry into effect the transactions so approved .... and to hold, maintain, and operate any properties and exercise any control or franchises acquired through such transactions." [12]

The Commission has been required to accommodate section 5(2) and the antitrust legislation due to the presence of the section 5(11) exemption [13] and the history of the development of the national transportation policy. [14]

In giving weight to antitrust policy as a factor in the "public interest," plaintiff Florida East Coast contends that the Commission must define the "line of commerce" (relevant product, or services, market) and "section of the country" (relevant geographical market) in which to appraise the probable competitive effects of the proposed merger and must determine whether the effect of the merger "may be

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[12] McLean Trucking Co. v. United States, 1944, 321 U.S. 67, 76-77; 49 U.S.C. § 5 (11). In cases of affiliation of a motor carrier with a railroad, the Commission cannot approve the merger "unless it finds that the transaction proposed will be consistent with the public interest and will enable such carrier to use service by motor vehicle to public advantage in its operations and will not unduly restrain competition." 49 U.S.C. § 5(2)(b).

[13] Minneapolis & St. L. R.R. v. United States, 1959, 361 U.S. 173, 186.

[14] McLean Trucking Co. v. United States, 1944, 321 U.S. 67, 79.

substantially to lessen competition" or "tend to create a monopoly." [15]

On its face this contention may seem contrary to the Supreme Court's decision in *McLean Trucking Co.* v. *United States*.[16] *McLean* involved the Commission's approval of the consolidation of seven large motor carriers. The most important effect of the merger was to create an end-to-end consolidation from points in the far South to New England, with obviously large possibilities for through service.[17] The

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[15] Section 7 of the Clayton Act provides in part:

"No corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no corporation subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of another corporation engaged also in commerce, where in any line of commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly.

"No corporation shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no corporation subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of one or more corporations engaged in commerce, where in any line of commerce in any section of the country, the effect of such acquisition, of such stocks or assets, or of the use of such stock by the voting or granting of proxies or otherwise, may be substantially to lessen competition, or to tend to create a monopoly.

. . . . . .

"Nothing contained in this section shall apply to transactions duly consummated pursuant to authority given by the . . . Interstate Commerce Commission . . . ."

15 U.S.C. § 18.

[16] 321 U.S. 67 (1944).

[17] See *id.* at 71.

order approving the consolidation was attacked on the ground that the merger, notwithstanding Commission approval, violated the Sherman Act [18] and, hence, the Commission had no power to approve the merger. The Court decided that the Commission is not required to decide definitively whether the transaction violated the Sherman Act, but that the Commission's role is to "estimate the scope and appraise the effects of the curtailment of competition which will result from the proposed consolidation and consider them along with the advantages of improved service, safer operation, lower costs, etc., to determine whether the consolidation will assist in effectuating the over-all transportation policy." [19] However, *McLean* does not dispose of the plaintiff's contention. Basic to the Court's determination in that case was the holding that the Commission has no jurisdiction to enforce the proscriptions of the Sherman Act. The Court stated:

> "To secure the continuous, close and informal supervision which enforcement of legislative mandates frequently requires, Congress has vested expert administrative bodies such as the Interstate Commerce Commission with broad discretion and has charged them with the duty to execute stated and specific statutory policies. That delegation does not necessarily include either the duty or the authority to execute numerous other laws. Thus here, *the Commission has no power to enforce the Sherman Act as such. It cannot decide definitively whether the transaction contemplated constitutes a restraint*

[18] See 15 U.S.C. §§ 1-3.

[19] *Id.* at 87.

> *of trade or an attempt to monopolize which is forbidden by that Act.* The Commission's task is to enforce the Interstate Commerce Act and other legislation which deals specifically with transportation facilities and problems. That legislation constitutes the immediate frame of reference within which the Commission operates; and the policies expressed in it must be the basic determinants of its action."

321 U.S. at 79-80 (Emphasis supplied.) In sharp contrast to the Commission's lack of jurisdiction to enforce the Sherman Act, Congress by section 11 of the Clayton Act has entrusted the Commission with authority to enforce compliance with section 7 and other Clayton Act provisions "when applicable to common carriers" under the Commission's jurisdiction.[20] While "the Commission's task is to enforce the Interstate Commerce Act and other legislation which deals specifically with transportation facilities and problems," the Clayton Act legislation constitutes an additional "frame of reference within which the Commission operates." [21]

We think *Minneapolis & St. L. Ry.* v. *United States*,[22] a decision more recent than *McLean*, recognizes that the Commission's estimate of the scope and appraisal of the effects of any curtailment of competition which might result from a merger is to be initially and properly approached in terms of whether the effect is "substantially to lessen competition, or

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[20] 15 U.S.C. § 21. See Georgia v. Pennsylvania R. R., 1945, 324 U.S. 439, 456 and n. 9.

[21] See McLean Trucking Co. v. United States, 1944, 321 U.S. 67, 79-80.

[22] 361 U.S. 173 (1959).

to tend to create a monopoly." In *Minneapolis* the Commission found that a proposed railroad acquisition "would not result in any significant [much less substantial] lessening of competition." [23] Its determination was said to rest upon "adequate findings." [24]

There is an additional reason why the Commission is required to decide whether or not section 7 of the Clayton Act would be violated by the proposed merger. It would seem that the Commission is required to "give weight" to antitrust policy in a section 5(2) proceeding only if the merger has the probable anticompetitive effect proscribed by section 7 of the Clayton Act. More specifically, when the effect of a proposed merger "may be substantially to lessen competition" or "to tend to create a monopoly," "in any line of commerce in any section of the country," the prohibition of the Clayton Act must be given weight. Conversely, when the proposed merger would not so result, the Commission is not required to give weight to antitrust policy. The Commission impliedly recognizes such a principle in its finding in the present case that the reduction of rail competition caused by the proposed merger will not be substantial. 320 I.C.C. 167.

Furthermore, it has long been settled that "immunity from the antitrust laws is not lightly implied." [25] When an agency, such as the Interstate Commerce Commission, is entrusted by Congress with authority to require compliance with section 7 of the Clayton Act,[26] and also to grant relief from the op-

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[23] *Id.* at 188, 189.

[24] *Id.* at 189.

[25] See, *e.g.*, United States v. Philadelphia Nat'l Bank, 1963, 374 U.S. 321, 348.

[26] 15 U.S.C. § 21.

eration of the antitrust laws,[27] the logical corollary would be that the Commission will not grant immunity from the antitrust laws unless clearly authorized by the law and required by the evidence.

For that policy to have any real substance the Commission is required to determine whether or not the effect of the proposed merger "may be substantially to lessen competition" or "to tend to create a monopoly," "in any line of commerce in any section of the country." That does not mean that the Commission may authorize only those acquisitions which would not offend section 7 of the Clayton Act.[28] The Commission with propriety may approve a rail consolidation, otherwise prohibited by the antitrust laws, in order to bring about needed or desirable improvement in service and economies in operation.[29] In other words, if the Commission finds that the policy of the Transportation Act would be thwarted unless a particular type of merger or consolidation were permitted, it would be authorized to approve the merger or consolidation, although the transaction would otherwise violate section 7 of the Clayton Act.[30]

Concomitant to the Commission's determination of whether the effect of the merger "may be substantially to lessen competition" or "tend to create a monopoly," the Commission must define the area of effective competition by reference to a product, or

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[27] 49 U.S.C. § 5(11).

[28] See Minneapolis & St. L. Ry. v. United States, 1959, 361 U.S. 173, 187.

[29] See McLean Trucking Co. v. United States, 1944, 321 U.S. 67, 78.

[30] See *id.* at 94 (dissenting opinion).

service market (the "line of commerce") and a geographic market (the "section of the country").[31]

We note that in *Minneapolis & St. L. Ry., supra,* which considered both the Sherman Act and section 7 of the Clayton Act, the Supreme Court did not expressly direct the Commission to define the relevant market by delineating a service market and a geographical market. However, that case was decided prior to *Brown Shoe Co.* v. *United States,* 1962, 370 U.S. 294. *Brown Shoe* was the first case to consider the background of the 1950 amendments to section 7 of the Clayton Act. In *Brown Shoe,* the Supreme Court set forth directions for measuring the relevant market within which the anticompetitive effects of a merger are to be judged.[32]

There is an additional reason for requiring the Commission to determine the product market and the geographic locus of competition. The Commission imposed routing and gateway conditions for the benefit of the intervening railroads to offset possible diversion of traffic by the merged company. It noted that "absent suitable protective conditions and con-

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[31] See Brown Shoe Co. v. United States, 1962, 370 U.S. 294, 324.

[32] Although Minneapolis & St. L. Ry. was decided in 1959, it is clear that only section 7 of the Clayton Act as enacted in 1914 was involved in that case and dealt with by the Court. See 361 U.S. at 185 & n. 11. The Court stated that "section 5(11) is both a more recent and a more specific expression of congressional policy than § 1 of the Sherman Act and § 7 of the Clayton Act . . . ." 361 U.S. at 186. However, the 1950 amendment to the section 7 of the Clayton Act is later in time than either section 5(11) or section 5(2) of the Interstate Commerce Act. Compare 15 U.S.C.A. § 18 (Historical note), with 49 U.S.C.A. § 5(2) (Historical note) and 49 U.S.C.A. § 5(11) (Historical note).

sideration of these factors [the public advantage that will accrue from the merger], there is a distinct possibility that the proposed transaction would tend to lessen competition to an extent which would contravene the policy underlying the antitrust laws." [33] We think it clear as the Commission has recognized, that routing and gateway conditions bear a distinct relationship to the possible anticompetitive effects of the merger. Moreover, we do not think routing and gateway conditions can be meaningful in terms of the "public interest" as affected by the Clayton Act unless they are imposed by reference to the product market and the geographic market. The Commission's primary concern is the "public interest," not "private interest." To impose routing and gateway conditions outside the context of the relevant markets either fails to employ Clayton Act standards as relevant to the public interest or assumes that private interest is consistently compatible with the public interest.

Therefore, we hold that the Commission must define the "line of commerce" and "section of the country" in which to appraise the probable competitive effects of the proposed merger and must determine whether the effect of the merger "may be substantially to lessen competition" or "tend to create a monopoly." The reason the Commission must make such findings is, most precisely, the fact that antitrust policy, to be given any effect whatsoever, must

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[33] 320 I.C.C. at 167. Compare 320 I.C.C. at 188. "We are convinced that these routing and gateway conditions will establish two balanced competitive systems in that area and will result in an increase rather than decrease in intramodal rail competition that will contribute to the present and future economic development of this important section of the Nation."

be measured in terms of criteria that have been developed by Congress and the courts.[34] If an erroneous statutory construction lies hidden in vague or insufficient findings then important statutory prerequisites to merger may be overlooked.[35]

Applying that holding to the present case, we conclude that the Commission has failed to make sufficient findings to accommodate section 5(2) of the Interstate Commerce Act with section 7 of the Clayton Act.

The Commission's conclusion concerning the anticompetitive effects of the proposed merger is reflected in its following statement:

> "Except in portions of Florida, the over-all reduction in rail competition in the Southeastern States will be relatively moderate and inconsequential when viewed in the light of the alternative rail service that will be provided by competitors of the merged company at most of the major industrial centers in the affected area. With few exceptions, vigorous rail competition will continue to flourish in the territory served by the merged company. The impact of any lessening of rail competition that might result from this merger will be minimized by the increasingly strong competition that the merged

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[34] In a recent article Professor Handler and Mr. Robinson have noted that "whatever the guidelines for ascertaining whether a merger may have the proscribed anticompetitive effects, they are not in the legislative text and must inevitably be defined by the highest court." Handler & Robinson, *The Supreme Court* v. *Corporate Mergers*, Fortune, January, 1965.

[35] See United States v. Carolina Carriers Corp., 1942, 315 U.S. 475, 489.

company will encounter from other modes of transportation."

320 I.C.C. at 211, 212. The Commission noted that Tampa and the central and western portions of Florida are served by no other railroads except Seaboard and Atlantic Coast Line. It recognized that the merger would supplant the duopoly with a rail monopoly. 320 I.C.C. at 164-165. The Commission's conclusion that the reduction of rail competition caused by the proposed merger would not be substantial, 320 I.C.C. at 167, was determined by reference to rail competition in the Southeastern States as a whole.[36] Furthermore, the Commission noted the growth in motor and water transportation service in recent years in Tampa and the surrounding area. See 320 I.C.C. at 152-53. And its conclusion that the reduction in competition that will result from the merger will have no appreciable injurious effect upon shippers and communities, 320 I.C.C. at 167, was apparently by reference to other modes of transportation—motor carriers, air carriers, water carriers and pipelines—operating in the Southeastern States.

It may be that the relevant geographical market

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[36] The Supreme Court has noted that "if anticompetitive effects of a merger are probable in 'any' significant market, the merger—at least to that extent—is proscribed . . . . [by section 7]. To illustrate: If two retailers, one operating primarily in the eastern half of the Nation, and the other operating largely in the West, competed in but two mid-Western cities, the fact that the latter outlets represented but a small share of each company's business would not immunize the merger [under section 7] in those markets in which competition might be adversely affected. On the other hand, that fact would, of course, be properly considered in determining the equitable relief to be decreed." Brown Shoe Co. v. United States, 1962, 370 U.S. 294, 337 & n. 65.

is the Southeastern States as a whole. But the proper question to be asked in determining the appropriate "section of the country" is not where the parties to the merger do business or even where they compete, but where, within the area of competitive overlap, the effect of the merger on competition will be direct and immediate." [37] The geographic market selected must both correspond to the commercial realities of the industry and be economically significant. Although the geographic market in some instances may encompass the entire Nation, under other circumstances it may be as small as a single metropolitan area.[38]

It may be that the relevant service market includes modes of transportation other than railroads. But the fact that other modes of transportation operate within the geographic area or areas, within which the anticompetitive effects of a merger are to be judged, is not determinative of the relevant service market. Similarly, reference to tonnage and dollar aggregates to show the decline of railroad transportation and rise of other modes of transportation, and such statistics as the number of truck registration in an area, are not, in themselves, determinative. The outer boundaries of a service market are to be determined by the reasonable interchangeability of use or the cross-elasticity of demand between the service itself and substitutes for it. It should be noted, however, that within this broad market, well-defined submarkets may exist, which in themselves constitute service markets for antitrust purposes. The bound-

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[37] United States v. Philadelphia Nat'l Bank, 1963, 374 U.S. 321, 357.

[38] See Brown Shoe Co. v. United States, 1962, 370 U.S. 294, 336-37.

aries of such a submarket may be determined by examining such practical indicia as industry or public recognition of the submarket as a separate economic entity, the service's peculiar characteristics and uses, unique service facilities, distinct customers, distinct prices and sensitivity to price changes.[39]

The United States, acting through the Attorney General, requests that the merger of Seaboard Air Line and Atlantic Coast Line be *permanently* enjoined. While a three-judge district court has power to enjoin the *orders* of the Commission authorizing a merger, we doubt if such a court has the power to permanently enjoin the *merger*. See 28 U.S.C. § 2321. Furthermore, the three-judge district court is limited to determining whether the Commission made any errors of law, whether its action was arbitrary, capricious, or an abuse of its discretion, and, upon review of the whole record, whether its findings of fact are supported by substantial evidence.[40] The United States' request that this Court permanently enjoin the merger would require that the Court go beyond the present record. We would have to find that upon no set of facts which the applicants might present could the merger be found to be in the "public in-

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[39] See *id.* at 325. Thus it may be that railroads constitute at least a submarket for the transportation of heavy-loading, low value bulk commodities due to cost and service advantages available to railroads.

Just as a service submarket may have section 7 significance as the proper "line of commerce," so may a geographic submarket be considered the appropriate "section of the country." See *id.* at 336.

[40] See Brotherhood of Maintenance of Way Employees v. United States, 221 F. Supp. 19, 24, *aff'd mem.*, 375 U.S. 216 (1963).

terest." For this Court to enjoin permanently the merger would require that we invade the long-established province of the Commission. Resolving such considerations is a complex task which requires extensive facilities, expert judgment and considerable knowledge of the transportation industry. The wisdom and experience of the Commission, not of the courts, must determine whether the proposed consolidation is "consistent with the public interest." [41] The United States' request for a permanent injunction against the merger is accordingly denied.

Intervening-plaintiff Railway Labor Executives' Association contends that the terms and conditions imposed by the Commission to protect the interests of the railroad employees affected are inadequate and violate section 5(2)(c)(4)[42] and section 5(2)(f)[43] of

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[41] McLean Trucking Co. v. United States, 1944, 321 U.S. 67, 87-88.

[42] "In passing upon any proposed transaction under the provisions of this paragraph, the Commission shall give weight to the following considerations, among others: . . . (4) the interest of the carrier employees affected." 49 U.S.C. § 5(2)(c)(4).

[43] "As a condition of its approval, under this paragraph, of any transaction involving a carrier or carriers by railroad subject to the provisions of this chapter, the Commission shall require a fair and equitable arrangement to protect the interests of the railroad employees affected. In its order of approval the Commission shall include terms and conditions providing that during the period of four years from the effective date of such order such transaction will not result in employees of the carrier or carriers by railroad affected by such order being in a worse position with respect to their employment, except that the protection afforded to any employee pursuant to this sentence shall not be required to continue for a longer period, following the effective date of such order, than the period during which such employee was in the em-

the Interstate Commerce Act and are unsupported by adequate, clear, and precise findings. The Association requests that the orders of the Commission should be declared invalid on these grounds. The Association's request, as its brief recognizes, is based on the assumption that the Commission's orders authorizing the merger are otherwise approved. Since the Commission's order must be enjoined for the reasons discussed above, consideration of the Association's contentions would be premature at this time.

The Commission found that under the merger plan the Mercantile-Safe Deposit and Trust Company will acquire power to control the merged company. It would be premature at this time for this Court to pass upon the question of whether Mercantile's power of control would be consistent with the public interest without requiring it to be considered as a carrier under section 5(3)[44] of the Interstate Commerce Act.

The orders of the Interstate Commerce Commission served December 13, 1963 and March 6, 1964 authorizing a merger of the properties and franchises of Atlantic Coast Line Railroad Company with Seaboard Air Line Railroad Company will be annulled and set aside and the enforcement of said order enjoined, all without prejudice to further proceedings

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ploy of such carrier or carriers prior to the effective date of such order. Notwithstanding any other provisions of this chapter and chapters 8 and 12 of this title, an agreement pertaining to the protection of the interests of said employees may hereafter be entered into by any carrier or carriers by railroad and the duly authorized representative or representatives of its or their employees." 49 U.S.C. § 5(2)(f).

[44] 49 U.S.C. § 5(3).

before and further findings and orders by the Commission not inconsistent with this opinion.

This the 13th day of May 1965.

/s/ Richard T. Rives
RICHARD T. RIVES
United States Circuit Judge

/s/ Bryan Simpson
BRYAN SIMPSON
United States District Judge

/s/ William A. McRae, Jr.
WILLIAM A. MCRAE, JR.
United States District Judge.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

No. 64-64-Civ.J.

FLORIDA EAST COAST RAILWAY COMPANY, a corporation, Florida East Coast Building, St. Augustine, Florida, PLAINTIFF

versus

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, DEFENDANTS

(Filed May 13, 1965, Jacksonville, Fla.)

Before RIVES, *Circuit Judge*, and SIMPSON and MCRAE, *District Judges*.

JUDGMENT

Pursuant to the opinion of the court this day entered, IT IS ORDERED, ADJUDGED AND DECREED by the court that the orders of the Interstate Commerce Commission served December 13, 1963 and March 6, 1964 authorizing a merger of the properties and franchises of Atlantic Coast Line Railroad Company into Seaboard Air Line Railroad Company, copies of which orders are attached to the original complaint in this cause, be and the same are hereby annulled and set aside and the enforcement of said orders is enjoined,

all without prejudice to further proceedings before and further findings and order by the Interstate Commerce Commission not inconsistent with the said opinion.

Done this the 13th day of May 1965.

/s/ Richard T. Rives
RICHARD T. RIVES
United States Circuit Judge

/s/ Bryan Simpson
BRYAN SIMPSON
United States District Judge

/s/ William A. McRae, Jr.
WILLIAM A. MCRAE, JR.
United States District Judge

APPENDIX C

STATUTES INVOLVED

The statutory provisions governing the Commission's approval of the consolidation of railroads are contained in section 5 of the Interstate Commerce Act, subparagraphs (2)(b), (2)(c) and (11) of which, 49 U.S.C. §§ 5(2)(b), 5(2)(c), and 5(11), provide:

> 2(b) Whenever a transaction is proposed under subparagraph (a), for the carrier or carriers or persons seeking authority therefor shall present an application to the Commission, and thereupon the Commission shall notify the Governor of each State in which any part of the properties of the carriers involved in the proposed transaction is situated, and also such carriers and the applicant or applicants (and, in case carriers by motor vehicle are involved, the persons specified in section 205(e).), and shall afford reasonable opportunity for interested parties to be heard. If the Commission shall consider it necessary in order to determine whether the findings specified below may properly be made, it shall set said application for public hearing; and a public hearing shall be held in all cases where carriers by railroad are involved unless the Commission determines that a public hearing is not necessary in the public interest. If the Commission finds that, subject to such terms and conditions and such modifications as it shall find to be just and reasonable, the proposed transaction is within the scope of subparagraph (a) and will be consistent with the public interest, it shall enter an order approving and authorizing such transaction, upon the

terms and conditions, and with the modifications, so found to be just and reasonable: PROVIDED, That if a carrier by railroad subject to this part, or any person which is controlled by such a carrier, or affiliated therewith within the meaning of paragraph (6), is an applicant in the case of any such proposed transaction involving a motor carrier, the Commission shall not enter such an order unless its finds that the transaction proposed will be consistent with the public interest and will enable such carrier to use service by motor vehicle to public advantage in its operations and will not unduly restrain competition.

(c) In passing upon any proposed transaction under the provisions of this paragraph (2), the Commission shall give weight to the following considerations, among others: (1) The effect of the proposed transaction upon adequate transportation service to the public; (2) the effect upon the public interest of the inclusion, or failure to include, other railroads in the territory involved in the proposed transaction; (3) the total fixed charges resulting from the proposed transaction; and (4) the interest of the carrier employees affected.

* * * *

(11) The authority conferred by this section shall be exclusive and plenary, and any carrier or corporation participating in or resulting from any transaction approved by the Commission thereunder, shall have full power (with the assent, in the case of a purchase and sale, a lease, a corporate consolidation, or a corporate merger, of a majority, unless a different vote is required under applicable State law, in which case the

number so required shall assent, of the votes of the holders of the shares entitled to vote of the capital stock of such corporation at a regular meeting of such stockholders, the notice of such meeting to include such purpose, or at a special meeting thereof called for such purpose) to carry such transaction into effect and to own and operate any properties and exercise any control of franchises required through said transaction without invoking any approval under State authority; and any carriers or other corporations, and their officers and employees and any other persons, participating in a transaction approved or authorized under the provisions of this section shall be and they are hereby relieved from the operation of the antitrust laws and of all other restraints, limitations, and prohibitions of law, Federal, State, or municipal, insofar as may be necessary to enable them to carry into effect the transaction so approved or provided for in accordance with the terms and conditions, if any, imposed by the Commission, and to hold, maintain, and operate any properties and exercise any control or franchises acquired through such transaction. Nothing in this section shall be construed to create or provide for the creation, directly or indirectly, of a Federal corporation, but any power granted by this section to any carrier or other corporation shall be deemed to be in addition to and in modification of its powers under its corporate charter or under the laws of any State.

The National Transportation Policy, 49 U.S.C. preceding section 1, provides:

It is hereby declared to be the national transportation policy of the Congress to provide for

> fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions;—all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy.

The relevant provisions of the antitrust laws are contained in sections 7 and 11 of the Clayton Act, 15 U.S.C. §§ 18 and 21 which, respectively, provide, in part:

> That no corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no corporation subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of another corporation engaged also in commerce, where in any line of commerce in any section of the country, the ef-

fect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly.

* * * * *

Nothing contained in this section shall apply to transactions duly consummated pursuant to authority given by the Civil Aeronautics Board, Federal Communications Commission, Federal Power Commission, Interstate Commerce Commission, the Securities and Exchange Commission in the exercise of its jurisdiction under section 79j of this title, the United States Maritime Commission, or the Secretary of Agriculture under any statutory provision vesting such power in such Commission, Secretary, or Board.

* * * * *

That authority to enforce compliance with sections 13, 14, 18 and 19 of this title by the persons respectively subject thereto is vested in the Interstate Commerce Commission where applicable to common carriers subject to the Interstate Commerce Act, as amended; in the Federal Communications Commission where applicable to common carriers engaged in wire or radio communication or radio transmission of energy; in the Civil Aeronautics Board where applicable to air carriers and foreign air carriers subject to the Civil Aeronautics Act of 1938; in the Federal Reserve Board where applicable to banks, banking associations, and trust companies; and in the Federal Trade Commission where applicable to all other character of commerce to be exercised as follows: * * *

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PAGE

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INDEX

	Page
Statement	1
Discussion	4
Conclusion	11

CITATIONS

Cases:

Arrow Co. v. *Cincinnati, N. O. & T. P. R.*, 379 U.S. 642 — 4

Interstate Commerce Commission v. *Baltimore & Ohio R. Co.*, 355 U.S. 175 — 4

McLean Trucking Co. v. *United States*, 321 U.S. 67 — 5

Minneapolis and St. L. Ry. Co. v. *United States*, 361 U.S. 173 — 5

Northeast Airlines, Inc. v. *Civil Aeronautics Board*, 331 F. 2d 579 — 11

United States v. *Bliss & Laughlin, Inc.*, 371 U.S. 70 — 4

United States v. *Great Northern R. Co.*, 343 U.S. 562 — 5

Statutes:

Clayton Act:

Sec. 7, 15 U.S.C. 18 — 3, 4, 5, 7, 8, 9, 10

Sec. 11, 15 U.S.C. 21 — 7

Interstate Commerce Act, 49 U.S.C.:

National Transportation Policy — 6

Sec. 5(2) — 4, 7

Sec. 5(11) — 4

Miscellaneous:

Fulda, *Antitrust Aspects of Recent Transportation Mergers*, 48 Minn. L. Rev. 723 (1964) ---------- Page 6

Meyer, Peck, Stenason, and Zwick, *The Economics of Competition in the Transportation Industries* (1959)---------- 6

Nelson, *Railroad Transportation and Public Policy* (1959)---------- 6

In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 425

SEABOARD AIR LINE RAILROAD COMPANY, ATLANTIC COAST LINE RAILROAD COMPANY, ET AL., APPELLANTS

v.

UNITED STATES OF AMERICA, FLORIDA EAST COAST RAILWAY COMPANY, ET AL.

No. 555

INTERSTATE COMMERCE COMMISSION, APPELLANT

v.

FLORIDA EAST COAST RAILWAY COMPANY, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA

MEMORANDUM FOR THE UNITED STATES

STATEMENT

Atlantic Coast Line Railroad Company and Seaboard Air Line Railroad Company are two of the three major railroads in the southeastern United States (the third being Southern Railway Company).

789-821—65

Atlantic and Seaboard serve many common points and areas, and about one-third of their combined traffic is competitive between them. In central and west Florida, they are the only rail carriers. They are prosperous railroads, although like most other members of the railroad industry their share of total traffic in the regions they serve has declined over the years with the rise of competing modes of transportation. Traffic and revenues from the carriage of their principal bulk commodities have, however, been increasing steadily.

On July 22, 1960, Atlantic and Seaboard filed with the Commission an application for authorization to merge. Lengthy administrative proceedings followed. The applicants introduced evidence to show that the merger would result in savings in operating expenses through the elimination of duplicate trackage and switching, terminal, and headquarter facilities, and would also lead to better and faster service. Opposition to the merger centered on the alleged adverse competitive effects that would flow from it. The Department of Justice pointed out that the merger would create a rail monopoly in the rapidly growing central and west Florida regions, and that the elimination of one of only three major rail lines in the Southeast as a whole would likely dampen the vigor of rail competition—particularly in service—in that region.

The Commission approved the proposed merger. It recognized that the merger would eliminate competition between Atlantic and Seaboard and would create a rail monopoly in parts of Florida. But it found

that there would remain ample competitive rail service in the Southeast as a whole and that the traffic on the merged lines would only be a small part of the total movement of traffic in the Southeast by all forms of transportation. The Commission pointed to a number of factors which, in its view, tended to lessen the anticompetitive effects of the merger. These factors included the pressure of vigorous intermodal competition, certain conditions imposed by the Commission on the merging lines requiring them to open some of their facilities to competing lines, and the degree to which the railroad industry is government regulated. The Commission concluded that the reduction of rail competition caused by the merger would not be substantial, that any adverse competitive effects were outweighed by the savings in operating expenses and improvements in service which the merger could be expected to produce, and that therefore the merger would be consistent with the public interest.

The three-judge district court set aside the Commission's order and returned the case to the Commission for further proceedings. It held that the Commission's analysis of the competitive effects of the merger was fatally deficient because the Commission had failed "to decide whether or not section 7 of the Clayton Act would be violated by the proposed merger" (J.S. App. I, p. 9) or to make the necessary preliminary findings required in a Section 7 case regarding the relevant product and geographic markets and submarkets. In disposing of the case on the ground of the Commission's failure to make a Section 7 analysis and

determination, the court left untouched a number of important issues in the case—including, of course, the ultimate question whether the merger would be consistent with the public interest because the foreseeable benefits to the public outweighed the foreseeable injury to competition.

DISCUSSION

Appellants ask this Court to grant plenary review of the question whether, in analyzing the competitive effects of a proposed railroad merger as a step in its appraisal of the public interest under Section 5(2) of the Interstate Commerce Act, the Interstate Commerce Commission was required to determine whether the merger violated the standards of Section 7 of the Clayton Act.[1] We think the court below erred in holding that the Commission was required to make that determination, and we believe that its error may appropriately be corrected by this Court summarily. See *United States* v. *Bliss & Laughlin, Inc.*, 371 U.S. 70; *Arrow Co.* v. *Cincinnati, N.O. & T.P.R.*, 379 U.S. 642; *Interstate Commerce Commission* v. *Baltimore & Ohio R. Co.*, 355 U.S. 175. In suggesting summary disposition, however, we do not contend that the Commission's analysis of competitive effects was adequate. The Department of Justice urged below that, tested by proper criteria, the Commission's findings in this

[1] Section 7, 15 U.S.C. 18, proscribes corporate mergers or acquisitions where, "in any line of commerce in any section of the country," the effect "may be substantially to lessen competition, or to tend to create a monopoly." Section 7 concededly is not applicable to mergers approved by the ICC. See Section 5(11) of the Interstate Commerce Act, 49 U.S.C. § 5(11).

case were *not* adequate, and we would renew that contention on a remand. But the question of the adequacy of the Commission's findings, in our view, is not ripe for decision by this Court at this time. The task of reviewing an administrative order and its underlying findings is primarily that of the three-judge district court, not this Court, whose practice is "not to review an administrative record in the first instance" (*United States* v. *Great Northern R. Co.*, 343 U.S. 562, 578). In basing its decision upon a single erroneous factor, the district court did not adequately review the administrative record. The case should be returned to the district court for a fresh scrutiny of the Commission's findings and order free of the incorrect view that the Commission is required to determine whether the proposed merger would violate Section 7 of the Clayton Act.

1. This Court, in *McLean Trucking Co.* v. *United States*, 321 U.S. 67, and more recently in *Minneapolis and St. L. Ry. Co.* v. *United States*, 361 U.S. 173, has made clear that the Commission, in determining whether a merger subject to the Commission's approval meets the statutory test of consistency with the public interest, "must estimate the scope and appraise the effects of the curtailment of competition which will result from the proposed consolidation" (321 U.S. at 87), and must consider those effects along with the anticipated benefits. For, though the statutes governing approval of rail mergers do not expressly mention competition, Congress has directed the Commission, in the performance of its regulatory duties, to promote "adequate, economical, and efficient

service" and "sound economic conditions in transportation" (National Transportation Policy, 49 U.S.C. preceding Section 1). Competition has traditionally been regarded as a critical force for the promotion of economic efficiency and progress, and distinguished students of transportation policy have urged that greater reliance be placed upon it as a method of fostering efficient and progressive transportation service.[2] We deem it essential, therefore, that the Commission make an adequate analysis of the competitive effects of any proposed merger that it is asked to approve and thereby immunize from antitrust attack.

The Commission's duty of analysis is, of course, not discharged if the Commission merely recites, without supporting analysis, that the merger has no adverse effect on competition; or bases its conclusion upon an inadequate grasp of the economics of competition; or ignores the teachings contained in this Court's antitrust decisions (insofar as the analysis of competition found in such cases may be useful in appraising competitive problems in the railroad industry). Certainly, the Commission may not rest with "vague or insufficient findings" (J.S. App. I, p. 12) on competition. Especially in a case like the present one, involving a proposed merger of great magnitude and far-reaching implications for the future structure of the railroad industry, it is the proper office of judi-

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[2] See, *e.g.*, Meyer, Peck, Stenason, and Zwick, *The Economics of Competition in the Transportation Industries* (1959); Nelson, *Railroad Transportation and Public Policy* (1959), p. 428; Fulda, *Antitrust Aspects of Recent Transportation Mergers*, 48 Minn. L. Rev. 723 (1964).

cial review to insist upon an adequate and probing, and not merely perfunctory or superficial, analysis by the Commission of the merger's competitive effects.

2. However, while emphatically agreeing with the court below upon the need for adequate standards in the appraisal of the competitive effects of rail mergers—standards drawn not merely from the Commission's specialized knowledge of railroad and transportation conditions and practices, but from sound economic principles of competition and from the experience of the courts in analyzing anticompetitive consequences of mergers under the antitrust laws—we think the court went astray in holding that the Commission is required to decide whether a merger which it is asked to approve violates the standard of Section 7 of the Clayton Act.

The court reasoned that such requirement is imposed by Section 11 of the Clayton Act, which empowers the Commission to enforce Section 7 against common carriers subject to the Interstate Commerce Act. However, Section 11 only authorizes the Commission to enforce Section 7 "where applicable to" such carriers; and Section 7, which expressly provides that "[n]othing contained in this section shall apply to transactions duly consummated pursuant to authority given by the * * * Interstate Commerce Commission * * * under any statutory provision vesting such power in such Commission," is inapplicable to mergers appraised by the Commission under Section 5(2) of the Interstate Commerce Act—as in the present case.

Moreover, the requirement that the Commission make a Section 7 finding misconceives the Commis-

sion's function in a rail merger case and might well aggravate the very danger that it is intended to avert—the danger of deficient appraisal by the Commission of the competitive effects of a merger subject to its approval power. The function of the Commission (unlike a Section 7 court) in a merger case is to weigh the anticompetitive effects of the merger against the benefits that the merger is expected to produce. But the ultimate finding required in a Section 7 case (*i.e.*, whether the effect of the challenged merger may be substantially to lessen competition in any market) tells little about the magnitude or scope of the adverse competitive consequences of the merger, save only to say that they are sufficient to invoke the bar of the statute. Such a conclusory finding is not very helpful to an agency required to balance a lessening of competition against other public-interest factors in passing on a merger; it is not sufficiently refined for the agency's balancing task. What the agency needs to know in order to perform its statutory function properly is not whether the merger has the anticompetitive effects proscribed by Section 7 but how substantial and widespread those effects are.

Suppose, for example, that a railroad merger is proposed that would produce substantial public benefits and, at the same time, great competitive harms in many markets—far greater harms than must be shown to prove a violation of Section 7, a statute aimed at arresting anticompetitive tendencies in their incipiency. In such a case, a finding merely that the merger was

contrary to Section 7—the only finding the Commission would be required, under the district court's view, to make—would seriously understate the merger's actual adverse competitive impact. Contrariwise, in a case where the injury to competition was relatively slight but the public benefits from the merger were also slight, the opinion of the court below might lead the Commission to take no cognizance whatever of the competitive harms, since they would fall short of the threshold of Section 7. Thus, the practical effect of the district court's ruling could, in many cases, be to mask the actual anticompetitive effects of railroad mergers.

3. In urging that this Court reject the rule adopted below—and in suggesting that the Court may with propriety do this summarily—we stress our complete agreement with the district court that the Commission is not free to make a perfunctory or superficial analysis of competition in a merger case; that it must apply standards grounded not only in its expert knowledge of railroad conditions but also in sound economic principles and the policy underlying the antitrust laws; and that exacting judicial review of the Commission's competitive findings is required. But we think the Commission can best be held to high standards in this area by careful and meticulous judicial scrutiny of the adequacy of its findings, rather than by compelling it, without basis in the governing statutes or in the Commission's function in a merger case, to act the precise role of a Section 7 court. In ruling that the Commission was required to do the

latter, the court below failed to do the former. In deciding that the Commission's order must be set aside for a failure to test the merger by the standards of Section 7 of the Clayton Act, it did not scrutinize the adequacy of the Commission's findings in detail. Specifically, it did not fully analyze the adequacy of the Commission's findings on competition, including the Commission's treatment of the Florida market and of intermodal competition, or examine the substantiality of the evidence to support these findings; nor did it consider such judgments made by the Commission as whether railroad regulation is sufficiently comprehensive to reduce significantly the importance of rail competition. The district court should address itself to these questions before a plenary consideration of them by this Court. The district court's answers to these questions could well obviate the need for further review by this Court; it would at least facilitate such review.

We therefore urge the Court to return the case to the district court for further review of the administrative order and findings. We do not think that the Court should at this juncture attempt to elaborate standards to guide the district courts in reviewing cases of this kind. That would be premature. It is likely that once the issue whether the Commission erred in failing to test the validity of the merger under Section 7 is excised from this case, the court below will not encounter undue difficulty in determining the adequacy of the Commission's competitive findings. If, for example, the court below finds that

the Commission's findings on competitive effects are "vague or insufficient" (as the Department of Justice argued below), that would be a proper basis for setting aside the Commission's order and returning the case to the Commission for the making of adequate and intelligible findings. See, *e.g., Northeast Airlines, Inc.* v. *Civil Aeronautics Board,* 331 F. 2d 579 (C.A. 1). Should a problem in the definition or application of the proper reviewing standards arise on remand to the district court, the case will then be ripe for plenary consideration here.

CONCLUSION

We accordingly suggest that the judgment of the district court should be vacated and the case remanded to that court with directions to make a fresh review of the adequacy of the Commission's findings without applying the erroneous standard of its first decision.

Respectfully submitted.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 425

SEABOARD AIR LINE RAILROAD COMPANY, ATLANTIC COAST LINE RAILWAY COMPANY, et al., *Appellants*

v.

UNITED STATES OF AMERICA, FLORIDA EAST COAST RAILWAY COMPANY, et al., *Appellees*

No. 555

INTERSTATE COMMERCE COMMISSION, *Appellant*

v.

FLORIDA EAST COAST RAILWAY COMPANY, et al., *Appellee*

On Appeal from the United States District Court for the Middle District of Florida

MOTION TO DISMISS OR AFFIRM

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INDEX

MOTION TO DISMISS OR AFFIRM

	Page
QUESTION PRESENTED	2
STATEMENT	3
ARGUMENT	5
1. Questions (a), (b) and (c) Sought to Be Presented by the Private Appellants Should Be Dismissed Because They Have Not Yet Been Passed On by the District Court	5
2. The Questions of Detail Raised by Appellants to Give This Appeal a Color of Substantiality Are Not Ripe for Judgment at This Time	7
3. The Judgment of the Court Below Was So Plainly Correct As Not to Call for Further Argument	12
CONCLUSION	27

CITATIONS

CASES:

Brown v. *Allen*, 344 U.S. 443 (1953)	8
Brown Shoe Co. v. *United States*, 370 U.S. 294 (1962)	15
Cory Corp. v. *Sauber*, 363 U.S. 709 (1960)	6
Federal Communications Commission v. *Allentown Broadcasting Co.*, 349 U.S. 358 (1955)	6
Federal Communications Commission v. *WJR, Inc.*, 337 U.S. 265 (1949)	6
Federal Radio Commission v. *General Electric Co.*, 281 U.S. 464 (1930)	7
International Salt Co. v. *United States*, 332 U.S. 392 (1947)	25
Langnes v. *Green*, 282 U.S. 531 (1931)	8
Marbury v. *Madison*, 1 Cranch 137 (1803)	7
McLean Trucking Co. v. *United States*, 321 U.S. 67 (1944)	11, 12, 13, 14

Page

Minneapolis & St. L.R. Co. v. *United States*, 361 U.S. 173 (1959) 11, 12, 13, 14
Norfolk & Western Ry. Co. and New York, Chicago & St. L.R. Co.—Merger, 324 I.C.C. 1 (1964) 25
Northern Pacific R. Co. v. *United States*, 356 U.S. 1 (1958) 22
Securities & Exchange Commission v. *Chenery Corp.*, 318 U.S. 80 (1943) 8
Texas Gas Corp. v. *Shell Oil Co.*, 363 U.S. 263 (1960) .. 6
Underwood Typewriter Co. v. *Chamberlain*, 254 U.S. 113 (1920) 11
United States v. *American R. Express Co.*, 265 U.S. 425 (1924) 8
United States v. *Bethlehem Steel Corp.*, 168 F. Supp. 576 (S.D.N.Y. 1958) 14
United States v. *Interstate Commerce Commission*, 337 U.S. 426 (1949) 6
United States v. *du Pont & Co.*, 353 U.S. 586 (1957) .. 14, 25
United States v. *First National Bank and Trust Co. of Lexington*, 376 U.S. 665 (1964) 15
United States v. *Great Northern R. Co.*, 342 U.S. 562 (1952) 6
United States v. *Philadelphia National Bank*, 374 U.S. 321 (1963) 9, 15, 20
United States Glue Co. v. *Oak Creek*, 247 U.S. 321 (1918) 11

STATUTES:

Clayton Act, Sec. 7, 15 U.S.C. § 18 ..... 3, 15, 22, 26
Sherman Act, Sec. 1, 15 U.S.C. § 1 15
Interstate Commerce Act, 54 Stat. 905, 49 U.S.C. § 5(2) 3
28 U.S.C. § 1253 ..... 3, 6
28 U.S.C. § 1336 6
28 U.S.C. §§ 2321-2325 ..... 3, 6
Fed Rules Civ. Proc. 61 8

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On Appeal from the United States District Court for the Middle District of Florida

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MOTION TO DISMISS OR AFFIRM

On Behalf of Appellee Southern Railway Company et al.

Appellee Southern Railway Company and its affiliated companies comprising Southern Railway Sys-

tem,* hereinafter referred to collectively as "Southern," hereby move pursuant to Rule 16 of the Revised Rules of this Court:

(1) To dismiss that part of the appeal in No. 425 of Seaboard Airline Railroad Company, Atlantic Coast Line Railroad Company, Atlantic Coast Line Company, and Mercantile Safe Deposit and Trust Company denominated in their Jurisdictional Statement as Questions (a), (b), and (c) on the ground that these questions have not yet been passed on by the district court and so are not properly presented to the Court on this appeal.

(2) To affirm the limited and interim judgment below on the ground that it is so plainly correct as not to merit further argument.

QUESTION PRESENTED

The holding and conclusion of the court below is set forth on page 15 of its opinion (242 F. Supp. 14, 22) and presents the following question:

Was the district court correct in setting aside orders of the Interstate Commerce Commission approving the merger of the Seaboard Air Line and Atlantic Coast Line Railroads, without prejudice to further proceedings by the Commission, on the ground that the Com-

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*The Alabama Great Southern Railroad Company; The Cincinnati, New Orleans and Texas Pacific Railway Company; New Orleans and Northeastern Railroad Company; Georgia Southern and Florida Railway Company; Carolina and Northwestern Railway Company; Central of Georgia Railway Company; and Savannah & Atlanta Railway Company—all of whom appeared with Southern Railway Company as intervening plaintiffs in the court below.

mission had failed to make sufficient findings to accommodate the Interstate Commerce Act with Section 7 of the Clayton Act because the Commission failed to define the line of commerce and section of the country in which to appraise the probable competitive effects of the proposed merger and failed to determine whether the effect of the merger may be substantially to lessen competition or tend to create a monopoly?

STATEMENT

This is a direct appeal under 28 U.S.C. § 1253 from a judgment and decree entered on May 13, 1965 by a district court of three judges convened pursuant to 28 U.S.C. §§ 2321-2325, which set aside an order of the Interstate Commerce Commission without prejudice to further proceedings, findings and orders by the Commission. The appeal is brought by private parties and is joined in part by the Commission.

The proceedings originated with an application to the Interstate Commerce Commission under Section 5(2) of the Interstate Commerce Act (54 Stat. 905, 49 U.S.C. § 5(2)) to approve the merger of Atlantic Coast Line Railroad Company (ACL) into Seaboard Air Line Railroad Company (SAL) and the related acquisition of control by the merged company of affiliated lines most prominently including Louisville and Nashville Railroad Company (L & N). After hearings and a recommended report by a hearing examiner, the Commission issued a report and order dated December 2, 1963 approving the merger with certain specified conditions, in which the Commission stated as a conclusion that the reduction of competition caused by the merger would not be substantial. On March 4, 1964, the

Commission issued a further order refusing reconsideration.[1]

Appellee Florida East Coast Railway Company (FEC) brought this action in the United States District Court for the Middle District of Florida to set aside the Commission's orders on the ground, *inter alia,* that the Commission's conclusion on reduction of competition was not supported by adequate consideration of antitrust policy as required by controlling Supreme Court decisions. Southern Railway Company (Southern) and its affiliated companies, who had intervened in the Commission proceedings, were allowed to intervene as plaintiffs in the district court. The court (per Rives, C. J.) unanimously sustained the complaint on the ground of inadequate Commission findings and set aside the Commission's orders "without prejudice to further proceedings before and further findings and orders by the Commission . . . ."

The legality of the merger was attacked in the district court on various and far-reaching grounds, many of which were not reached by the court. The court took note of Commission findings that the merger of these essentially parallel lines would eliminate competition between SAL and ACL in a six-state Southeastern area; that the merged company would control more than 54% of the total rail mileage in the six-state area and, with the ACL's controlled affiliate the L & N, in an eight-state area; and that the merged company would have about 81% of the railway mileage in the State of Florida. Nevertheless the court refused a

[1] The report of the Interstate Commerce Commission is printed at 320 I.C.C. 122. The Commission's orders are set forth as Appendices B and C to the private appellants' Jurisdictional Statement.

request by the United States, aligned as a party plaintiff in this suit, to hold that the merger could not be sustained on any conceivable Commission findings or order. The court similarly declined to pass on Southern's request that the Commission be required to condition approval of the merger on divestiture of the L & N or on transfer by the merged company of a line of railroad into central and west-coast Florida. In addition, the court, because of its holding, did not reach the question whether there was evidence in the record to support the findings of the Commission. The court also specifically declined to rule on the adequacy of the Commission's railway-employee protective terms and conditions, challenged by intervening plaintiff Railway Labor Executives' Association, or on the legality of control over the merged company by intervening defendant Mercantile-Safe Deposit and Trust Company, stating in each case that decision of these questions "would be premature at this time."

ARGUMENT

1. Questions (a), (b) and (c) Sought to Be Presented by the Private Appellants Should Be Dismissed Because They Have Not Yet Been Passed On by the District Court.

The private appellants recognize that the district court has not yet dealt with many of the matters presented to it. Their Jurisdictional Statement, however, includes among its questions presented if probable jurisdiction is noted a request that:

> "In view of the full record on these matters and the manifest correctness of the Commission's rulings on them, despite the failure of the court below to pass on them, . . . the judgment below be reversed with instructions to dismiss the complaint, and the orders of the Commission be reinstated . . . ." (p. 5.)

In effect the private appellants expect this Court to sit as a court of first instance to review the administrative proceedings before the Commission. Their request, in which significantly appellant Interstate Commerce Commission does not join, seeks something that this Court has never done and should not do.

First, as a matter of *practice,* in cases coming from the Interstate Commerce Commission "it is the practice of this Court not to review an administrative record in the first instance . . . ." *United States* v. *Great Northern R. Co.,* 343 U.S. 562, 578 (1952). Cf. *Federal Communications Commission* v. *Allentown Broadcasting Corp.,* 349 U.S. 358, 365 (1955): "... [I]t is not our function to reinstate the determination of the Commission. That would make this Court the reviewing body of the ultimate determination of the Commission."

Second, as a matter of *statute,* it is clear that 28 U.S.C. §§ 1336, 2321-2325 vest original jurisdiction in the three-judge district court, whereas this Court's jurisdiction under 28 U.S.C. § 1253 is unmistakably appellate. This Court sits to review the judgment of the district court, not of the Commission, and in case of reversal it invariably remands to the district court for further proceedings. *United States* v. *Great Northern R. Co., supra.*[2]

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[2] The following additional authorities support the revesting of original jurisdiction in the lower federal courts to review additional questions arising out of administrative proceedings: *Federal Communications Commission* v. *WJR, Inc.,* 337 U.S. 265, 285 (1949); *United States* v. *Interstate Commerce Commission,* 337 U.S. 426, 444 (1949); *Texas Gas Corp.* v. *Shell Oil Co.,* 363 U.S. 263, 276-77 (1960); *Cory Corp.* v. *Sauber,* 363 U.S. 709, 712 (1960).

This then is one of the few cases where this Court has been asked directly to review administrative proceedings. On previous such occasions, the Court has regularly dismissed for want of jurisdiction. *E.g., Marbury* v. *Madison,* 1 Cranch 137 (1803); *Federal Radio Commission* v. *General Electric Co.,* 281 U.S. 464 (1930).

For these reasons, if probable jurisdiction is noted, it is respectfully submitted that the Court should explicitly limit its jurisdictional grant to exclude consideration of questions (a), (b), and (c) sought to be presented by the private appellants in No. 425.

2. The Questions of Detail Raised by Appellants to Give This Appeal a Color of Substantiality Are Not Ripe for Judgment at This Time.

Both the private appellants and the Commission express elaborate concern about the complex ramifications for I.C.C. merger proceedings supposedly created by the district court's requirement that the Commission couch its antitrust conclusions in terms of the geographic and service markets in which the probable competitive effects of the proposed merger "may be substantially to lessen competition" or "tend to create a monopoly." Thus the Commission complains of an imprecision of detail in the district court's opinion as to the extent of market investigation required, and sets forth a list of considerations allegedly contributing special complexity to the task of market definition in transportation mergers. (Jurisdictional Statement in No. 555, pp. 17-18.) The private appellants similarly bemoan the unworkability of the district court's opinion, claiming at one point that at least 7,260 "city pairs" might have to be considered

by the Commission in its search for geographic markets. (Jurisdictional Statement in No. 425, p. 28 & n. 26.)

It is necessary to state at the outset that these are highly abstract concerns. It may be possible "mathematically," as the private appellants say, to derive wholly unworkable implications from the district court's opinion. But the process of adjudication is fortunately not limited to the indiscriminate calculations of an abacus. That is why this Court has repeatedly reminded litigants that it sits to review judgments, not just opinions in the abstract. *United States* v. *American R. Express Co.*, 265 U.S. 425, 435 (1924); *Langnes* v. *Green*, 282 U.S. 531, 535-39 (1931); *Brown* v. *Allen*, 344 U.S. 443, 458-60 (1953). See generally *Securities & Exchange Commission* v. *Chenery Corp.*, 318 U.S. 80, 88 (1943); Fed. Rules Civ. Proc. 61. A judgment results from the impress of an opinion on the facts of record, and both must be looked at before concluding whether theoretically possible questions are in fact presented for decision.

Looking first at the opinion, it is important to remark what the district court did not decide. It did not hold that the antitrust laws are the measure of permissibility for railroad mergers. Quite the contrary, the district court stated explicitly on pages 12-13 of its opinion (242 F. Supp. at 21) that the Commission remains free to approve the merger if, after making adequate and properly supported findings on the resulting lessening of competition or tendency to create a monopoly, the Commission determines that the policy of the Transportation Act would otherwise be thwarted. The court's opinion carefully refrains from expressing any views as to whether the Commis-

sion should approve or disapprove the proposed merger or whether the Commission should impose or reject any particular conditions.

The district court was similarly careful to refrain from foreclosing consideration by the Commission of special factors that may affect the definition of markets in transportation merger proceedings. What the court laid down were general standards for appraising geographic markets[3] and service markets,[4] both proceeding from the basic statement of antitrust policy contained in this Court's *Philadelphia Bank* decision (itself, it should be noted, a regulated-service-industry case); namely, that a market for antitrust purposes is found "where, within the area of competitive overlap, the effect of the merger on competition will be direct and immediate."[5]

So long as it follows that principle and those general standards, the Commission remains entirely free to apply its transportation expertise to the process of actual market definition. If considerations arise bearing on the manageability of I.C.C. merger proceedings, the Commission may certainly take them into account in fashioning responsively rough-cut rules of admissibility. The Commission may in its judgment refuse for reasons of manageability to consider

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[3] "The geographic market selected must both correspond to the commercial realities of the industry and be economically significant." Opinion p. 17, 242 F. Supp. at 23.

[4] "The outer boundaries of a service market are to be determined by the reasonable interchangeability of use or the cross-elasticity of demand between the service itself and substitutes for it." Opinion p. 18, 242 F. Supp. at 23.

[5] *United States* v. *Philadelphia National Bank*, 374 U.S. 321, 357 (1963), quoted at opinion p. 17, 242 F. Supp. at 23.

the 7,260 "city pairs" suggested by the private appellants, or any other theoretical submarkets lacking sufficient economic significance.

Thus the imprecision of detail about which the Commission complains in the district court's opinion would seem more realistically to be a virtue, in that it permits the Commission—the expert body—to grapple with the practical considerations affecting railroad-merger market definition in the first instance.

The reason the district court could not be more detailed itself is that it was dealing with a vacuum. As will be developed more fully in part 3 hereafter, the Commission had made no effort whatsoever to discover or appraise the relevant markets in terms required by antitrust policy, even though the undisputed facts of record raised serious antitrust questions—rail monopoly in central and west-coast Florida, vertical foreclosure of extensive interchange business with the merged company's controlled subsidiary L & N—which the Commission by failing to appraise relevant markets left wholly unresolved. Taking the Florida question alone at this point, the Commission refused to consider whether this was a separate market, taking refuge repeatedly in generalities about competition in the Southeast as a whole and among all modes of transportation; the Commission made no effort to investigate the distinctive economic characteristics of the region, or the peculiarly rail-oriented nature of the principal commodities transported within it.

In this context it seems evident that questions of detail—the ease and workability of rules of market definition—cannot arise for judicial consideration until after the Commission itself has made an effort to apply the proper standards.

The adjudicative process advances of necessity by stages.[6] In *McLean Trucking Co.* v. *United States,* 321 U.S. 67 (1944), and *Minneapolis & St. L.R. Co.* v. *United States,* 361 U.S. 173 (1959), it was enough to decide that the antitrust laws had to be accommodated by the Commission with the transportation laws. Now it is time to decide, as the district court did, whether in passing on the antitrust aspects of a merger the Commission is free to adopt any criteria it wishes or must apply standards derived from the antitrust laws. At a later point in this litigation other, more difficult questions of detail may arise. But these questions, which at present are highly abstract, may never arise in this case in concrete form—either because the very obvious anticompetitive effects of the merger as in Florida will lead the Commission quite readily to invalidate or condition the merger to the satisfaction of all appellees, or because the Commission will follow up a satisfactory antitrust appraisal with a determination that the merger should nonetheless be approved. If questions of detail do arise, they will do so on a record and in a form that will permit their concrete adjudication; this Court's consideration should await that later day.

Leaving the Commission to work out the questions of detail will not only assist this Court in its ultimate review but actually should ease and expedite the Commission's proceedings in other pending rail-merger

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[6] Compare the early state-income-tax decisions, in which this Court passed first upon the naked question of state power to levy taxes on the net income from interstate business, and only later considered the reasonableness of state apportionment formulas. *United States Glue Co.* v. *Oak Creek,* 247 U.S. 321 (1918); *Underwood Typewriter Co.* v. *Chamberlain,* 254 U.S. 113 (1920).

cases.[7] A prompt summary affirmance will permit the Commission to go forward in these cases, whereas otherwise it would have to stay all rail-merger proceedings for the several months it would take to brief, argue, and decide the presently complex and abstract questions of detail raised by appellants. Furthermore, if the Commission is freed promptly to apply the district court's market standards to all pending mergers, it can be expected to develop in the process whatever differentiations of detail are dictated by the varying records placed before it. These too should be presented to this Court before it undertakes to bind the Commission's hand.

All of these considerations, rooted as they are in the effective administration of judicial business, support a conclusion that the questions of detail raised by appellants are not ripe for adjudication at this time. What remains is the simple question whether the court below correctly concluded, on the facts of record, that the Commission had failed properly to appraise and apply antitrust policy as required by this Court's *McLean* and *Minneapolis* decisions.

We think the correctness of the district court's judgment on this score is too plain to require extended argument.

3. The Judgment of the Court Below Was So Plainly Correct As Not to Call for Further Argument.

As pointed out by the court below, the Commission's finding that the reduction of competition caused by the merger would not be substantial was determined by reference to the Southeastern states as a whole and to

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[7] Some of these cases are listed on page 19 of the Commission's Jurisdictional Statement.

all modes of transportation including motor and water transportation. (Opinion pp. 16-17; 242 F. Supp. at 22-23.) In effect the Commission directed its appraisal at the broadest conceivable service and geographic markets in which the merging companies operate, and without regard to the major commodities carried by the two roads. This we contend was error, in that the Commission failed to follow the clear implications of this Court's decisions in *McLean Trucking Co.* v. *United States,* 321 U.S. 67 (1944), and *Minneapolis & St. L.R. Co.* v. *United States,* 361 U.S. 173 (1959); namely, that in considering a proposed merger the Commission must accommodate transportation policy with antitrust policy. Thus, it is completely inaccurate to state, as do the private appellants in their Jurisdictional Statement (p. 24), that there is no contention in this case that the Commission failed to comply with the standards prescribed in *McLean* and in *Minneapolis.* That was and is precisely the contention of Southern and it was also the contention of the Department of Justice and the FEC. It was the contention of those opposing the merger that the Commission failed to use proper standards in seeking to accommodate antitrust legislation to the Interstate Commerce Act as required by *McLean* and *Minneapolis.* While the Commission took the position that it was entitled to use some undefined Transportation Act standards to determine the antitrust policy that was to be accommodated (Commission brief below, pp. 52, 67-77), the parties opposing the merger took the position that antitrust criteria must be used to determine the antitrust policy which was then to be weighed with Transportation Act policy to make the required accommodation.

As a matter of simple economics, it seems abundantly clear that the anti-competitive effects of a merger can not be discovered or the extent thereof determined in a vacuum; it is only by relating the effect of a merger to relevant markets that a body can determine the existence of and the extent of anti-competitive effects. See *United States* v. *du Pont & Co.,* 353 U.S. 586, 593 (1957); *United States* v. *Bethlehem Steel Corp.,* 168 F. Supp. 576, 592 (S.D.N.Y. 1958). Any merger can be shown to have little or no effect on competition if relevant markets are ignored or if the merger is viewed from the standpoint of the broadest possible geographic and service markets. That is what the Commission did here and it was this error on which the court below rested its decision.

As a matter of law, moreover, it seems generally agreed in this case that in a merger proceeding the Commission is obliged to accommodate transportation policy with antitrust policy. *McLean Trucking Co.* v. *United States,* 321 U.S. 67, 86-87 (1944); *Minneapolis & St. L.R. Co.* v. *United States,* 361 U.S. 173 (1959). It is evident, furthermore, that the antitrust policy which is to be accommodated with transportation policy cannot be determined by reference to other statutes but must be drawn from the antitrust statutes and court decisions construing them; that is why in the *Minneapolis* case, *supra,* the Court said accommodation must be made with the "antitrust legislation." 361 U.S. at 186.

Once these established premises are accepted, it follows that as part of its responsibility to consider antitrust policy in a merger proceeding the Commission must make some appraisal of the economically significant markets in which effects on competition will be

felt. Nothing is more basic to the antitrust policy on mergers. Section 7 of the Clayton Act (15 U.S.C. § 18), the prime legislative source of antitrust merger policy, is phrased in terms of the "line of commerce" and "section of the country" in which competition may be lessened or monopoly produced. This Court's decisions under both the Clayton and Sherman Acts uniformily proceed by investigating the product or service markets and geographic market affected by a merger. *E.g., Brown Shoe Co.* v. *United States,* 370 U.S. 294 324 (1962); *United States* v. *Philadelphia National Bank,* 374 U.S. 321, 357 (1963); *United States* v. *First National Bank and Trust Co. of Lexington,* 376 U.S. 665, 667-68 (1964).[8] To neglect entirely such a market appraisal, as the Commission did, is necessarily to fail to consider or apply the antitrust policy on mergers and thus to render inadequate the resulting finding regarding a merger's effect on competition.

It needs only a brief recitation of the most salient facts of this merger to show why a proper appreciation of antitrust policy is essential to its consideration. The two railroads involved in this merger operate throughout a six-state area,[9] and with the L & N Railroad,

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[8] Since both the private appellants and the Commission complain in their Notices of Appeal of being required to measure markets by Section 7 of the Clayton Act and "the non-rail merger cases decided thereunder," it is worth noting that this Court in the *Lexington Bank* case relied on four earlier railroad-merger cases for the proposition that—apart of course from valid Commission approval—"where merging companies are major competitive factors *in a relevant market,* the elimination of significant competition between them, by merger or consolidation, itself constitutes a violation of § 1 of the Sherman Act." 376 U.S. at 671-72. (Emphasis added.)

[9] Virginia, North Carolina, South Carolina, Georgia, Alabama and Florida.

which will be controlled by the merged company, the combination would have approximately 54% of the total rail mileage, amounting to some sixteen thousand miles of rail, in an eight-state area.[10] (320 I.C.C. at 163.) The combination of these two railroads would result in a company with assets of over 1 billion dollars, operating revenues of some 340 million dollars a year and combined net income of about 32 million dollars annually. (320 I.C.C. at 253-65.) These are not feeble, failing companies; as the Commission found, "each railroad is currently in a relatively healthy condition." (320 I.C.C. at 146.) The hearing examiner also found that neither applicant was "in any foreseeable danger of financial difficulty."

The merger would eliminate competition between the two applicants on some 131 million dollars of carload freight revenues and would eliminate competition between them at some 121 common points in the six-state area considered by the Commission. (Ex. H-253; 320 I.C.C. at 164.)

About 54 million dollars of the presently competitive freight revenues of the two railroads would be entirely non-competitive with any other railroad after the merger. (320 I.C.C. at 163-64; Ex. H-253.) Furthermore, over 64% of the total carload traffic of the merged company would originate or terminate at points not served by any other railroad.[11]

Extensive as are the competitive effects of the merger throughout the southeast United States, the im-

[10] Virginia, North Carolina, South Carolina, Georgia, Alabama, Florida, Kentucky and Tennessee.

[11] Examiner's Report, reproduced in the private appellants' Jurisdictional Statement as Appendix E, pp. 104-05.

pact of the merger would be particularly concentrated and severe within the State of Florida. There the merged company would have some 81% of the total railroad mileage. (320 I.C.C. at 163.) In the entire central and west-coast market region of Florida, a market which contains over 40% of the state's population and is growing economically at a faster rate than Florida as a whole, faster than the six-state Southeastern area and faster than the United States as a whole,[12] all rail competition would be completely eliminated and an absolute rail monopoly would be created.

While appellants' Jurisdictional Statement (p. 7) and the Commission's Report seek to diminish the harsh effects of elimination of competition flowing from this merger by the bland statement that "only 17 communities outside of Florida" will be without rail competition after the merger, this cannot alter the far more important fact that there will be 59 communities within Florida which now enjoy rail competition but which will be left without any rail competition after the merger. (320 I.C.C. at 164.) The freight volume and dollar revenue to the two roads from traffic originating and terminating at these points, all of which are located in central and west-coast Florida, far exceeds the volume and revenue from all similar points in the Southeast combined. To be specific, of the freight and revenues on which presently existing competition in the Southeast will be altogether eliminated by the merger,

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[12] Ex. H-155, pp. 41, 54-61, 148-53.

roughly 83% arise from points in central and west-coast Florida.[13]

The traffic involved in these movements is predominantly rail traffic. Of the total rail and truck traffic moving in and out of the four most active points in central and west-coast Florida, which account for almost 40 million tons of originating and terminating traffic, truck competition has taken less than 20%.[14] The rails are dominant because the products carried are largely heavy loading, low value commodities. The nine basic commodities handled by the two roads and which account for 75% of their total tonnage are of this character.[15] For example, in 1959 the two roads handled over 20 million tons of phosphate rock, divided almost evenly between them, produced in central and west-coast Florida, and received revenues from

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[13] Computed from figures in the Examiner's Report, Appendix E, pp. 104-06. The Commission's statement that "the number of Florida points at which there has been no competition is about four times as great as the number of Florida points at which Seaboard and Coast Line have heretofore competed" cannot obscure the unmentioned fact that some 60 million dollars of revenue is derived by the two carriers from traffic originating or terminating at Florida points served only by the two carriers while some 47.5 million dollars of revenue is derived from the Florida points local to one or the other line. *Ibid.*

[14] The applicants' own figures (Ex. H-36, Vol. 2, Statement T) show that of the total rail and truck traffic moving in and out of the four most active points in central and west-coast Florida, railroads have retained the following percentages:

Mulberry	25 million tons—rails,	93.5%
Tampa	10.5 million tons—rails,	69.0%
Orlando	2.7 million tons—rails,	72.6%
St. Petersburg	1.5 million tons—rails,	90.3%

[15] Examiner's Report, Appendix E, pp. 12-13.

the carriage of this commodity totaling over 27 million dollars. (Ex. H-38.) The Commission conceded that this is "essentially a commodity normally handled by rail." (320 I.C.C. at 151.)

In the face of these undisputed facts the Commission in its opinion evaluated the competitive effect of the merger in the broadest possible geographic area, the broadest possible service area, and without regard to the commodities carried. The Commission, to support its finding that there would not be a substantial lessening of rail competition, at times used the six-state Southeastern area; it also used the Southern region as a whole, and at other times to minimize the loss of competition it cited statistics for the entire nation. The minor consideration given to the drastic effects of completely eliminating rail competition in central and west-coast Florida was reflected in the Commission's statement that the merger would simply replace the "duopoly" that has existed with a "monopoly." (320 I.C.C. at 165.) In its cursory consideration of the effect of the merger in this important central and west-coast Florida area, the Commission failed to appraise the impact of the elimination of competition on the carriage of commodities which are carried almost entirely by rail and which comprise the very commodities that account for the greater part of the revenues of the two applicants. And instead of focusing its attention on the dominant railroad mode of transportation for these commodities, the Commission diluted its appraisal by referring to general competition between railroads, trucks, airlines, pipe lines and water carriers —heedless of whether or to what extent these modes of transportation in fact operated in competition for

freight with the applicants in central and west-coast Florida.[16]

Considering the undisputed facts of record regarding the competitive effect of the merger in central and west-coast Florida, as well as the treatment given to these facts by the Commission, it seems undeniable that the Commission wholly failed to appraise the impact of the merger, as it was obligated to do by antitrust policy, in the most significant market—the one "where, within the area of competitive overlap, the effect of the merger on competition will be direct and immediate." *United States* v. *Philadelphia National Bank,* 374 U.S. 321, 357 (1963).

Apparently recognizing the inescapable economic significance of the rail competition in central and west-coast Florida that will be totally eliminated by the merger, the private appellants now state in conclusory fashion that the Commission did in fact make an extensive examination of "the special situation presented as to rail transportation in central and western Florida." (Jurisdictional Statement, p. 24.)[17] This con-

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[16] For example, see the Commission's discussion of the effect of the merger on the Tampa area (320 I.C.C. at 152-53), in which the Commission attributes a rate decline on phosphate rock to intermodal competition, even though the Commission had just conceded (at 151) that phosphate rock was "essentially a commodity normally handled by rail"; the balance of the Commission's freight statistics from the Tampa area make no reference to commodities carried in that area even though the Commission had just recognized (at 152) that the long-haul truck share of the market varies between such figures as 18 per cent for fertilizers to 92 per cent for paper mill products.

[17] The Commission itself makes no such claim, but rather concedes that it submerged rail competition in Florida within the category of intermodal competition throughout the Southeast. (Jurisdictional Statement, p. 4).

tention is, however, belied by the Commission's own report. For the Commission specifically refused to focus its appraisal of the merger's competitive consequences on the reduction of rail competition in Florida, stating that:

> "The impact of this merger, both good and bad, will be felt throughout the southern region and in evaluating its competitive advantages and disadvantages, we must consider the rail service provided by all rail carriers and, in fact, *the sum of all of the competitive transportation facilities that will remain available in this broad area.*" (320 I.C.C. at 166.) (Emphasis added.)

It was only by minimizing and ignoring the effects of the merger in central and west-coast Florida, and by assessing the competitive impact primarily with reference to all transportation modes in the Southern region or "in the Southeastern States viewed as a whole" (*ibid.*), that the Commission was able to reach its rather remarkable specific conclusions; namely, "that (1) the reduction of rail competition caused by the proposed merger will not be substantial; (2) ample competitive rail service will remain after the merger throughout most of the affected area, and (3) such reduction in competition as will result from the merger will have no appreciably injurious effect upon shippers and communities." (320 I.C.C. at 167.)

The private appellants' Jurisdictional Statement (pp. 8, 27) seeks to give the impression that the Commission imposed its protective condition requiring the merged company to establish, with Southern, joint rates for traffic through the Jacksonville gateway "with particular reference to the origination of traffic that would exist in central and western Florida" (p. 8). This

condition is discussed at 320 I.C.C. 181-83. Not one mention is made of traffic originating in central and western Florida. Indeed the condition itself (Condition 8, Appendix XI, 320 I.C.C. at 267) requires only that the merged company establish joint rates with Southern "*no higher* than the rates applicable over the lines of the merged company" (emphasis added). By any standards this does not establish competition between the merged company and other lines. Cf. *Northern Pacific R. Co.* v. *United States,* 356 U.S. 1, 11-12 (1958). We submit that the district court was entirely correct in its observation that:

> "To impose routing and gateway conditions outside the context of the relevant markets either fails to employ Clayton Act standards as relevant to the public interest or assumes that private interest is consistently compatible with the public interest." (Opinion p. 15, 242 F. Supp. at 22.)

The Commission's capacity to impose particular protective conditions on its approval of railroad mergers does in fact equip the Commission with a peculiarly fit instrument—and, we submit, a correlative responsibility—for careful market analysis. A condition cannot be effectively designed to protect against reduction of competition unless it is framed with particular market risks in mind. The Commission appears to have recognized the inter-relationship of protective conditions with antitrust policy, for it stated that:

> "Absent suitable protective conditions . . . . there is a distinct possibility that the proposed transaction would tend to lessen competition to an extent which would contravene the policy underlying the antitrust laws." (320 I.C.C. at 167.)

Yet the Commission's protective conditions were not related to the markets in which the impact of the

merger would be most immediate and direct. Rather the conditions were stated to be

> "the product of our exhaustive study of the competitive situation in the *Southeast.* We are convinced that these routing and gateway conditions will establish two balanced competitive systems *in that area* and will result in an increase rather than decrease in intramodal rail competition that will contribute to the present and future economic development of *this important section* of the Nation." (320 I.C.C. at 188.) (Emphasis added.)

This failure of the Commission to relate its conditions to the market most seriously affected by the merger was not for want of invitation. In the belief that the creation of a railroad monopoly in central and west-coast Florida could not be held to be "consistent with the public interest," Southern offered to reintroduce competition in this region if the merger was approved. It proposed that the Commission attach, as a condition to any approval, a requirement that the merged company for fair consideration transfer to Southern or another qualified, independent rail carrier a line of railroad from Jacksonville through Orlando to Tampa and other central and west-coast Florida points.[18] The Commission had adopted similar conditions requiring the transfer of rail lines or trackage rights where it considered that "the conditions will create more balanced competition among the several rail carriers in the southeastern seaboard area, and thus benefit the public generally." (320 I.C.C. at 184.) Approval of Southern's proposal would appear to have followed as of course from a like appraisal of the distinctive central and west-coast Florida market.

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[18] The applicants presently have three substantially parallel lines of railroad running from northeastern Florida into this area.

Despite what would seem to have been the obvious appropriateness of this proposal, however, the Commission rejected it as an "invasion of territory now adequately served by the applicants" which "would deprive the merged company of substantial revenues" and which could not be justified "in the absence of a public need for additional service." (320 I.C.C. at 187, 209.) We submit that this conclusion demonstrates a total failure to grasp, much less apply, antitrust policy, and that in particular the Commission's appraisal of public need is flawed by its failure to give separate consideration to the central and west-coast Florida market.

As indicated by the foregoing language in the Commission's Report, characterizing Southern's proposal for maintenance of competition in central and western Florida as a threatened "invasion of territory," the Commission's failure to define and appraise relevant geographic and service markets was symptomatic of a more general failure by the Commission to appreciate the requirements of antitrust policy.

While the district court did not pass on the contention of the plaintiffs below that the merger should be conditioned on divestiture by the merged company of the L & N Railroad, we believe the L & N situation similarly demonstrates the Commission's failure even to recognize antitrust problems in this case. Without such recognition it is, of course, impossible to make any meaningful accommodation of antitrust policy with the Transportation Act.

The undisputed evidence, indeed the evidence submitted by the applicants themselves, demonstrates that the ACL originally acquired control of the L & N in order that their "interchange business should be permanently secured," that the ACL has "favored L & N to the maximum extent consistent with the best inter-

ests of the Coast Line," that "all things being equal, it has, of course, been the policy of Coast Line to prefer the L & N routes," and that the merged company would continue this policy of the ACL and would favor the L & N whenever it was on a comparable basis with competition.[19] The interchange business thus affected is very substantial; in 1957 the SAL and ACL between them earned revenues of roughly $32 million through interchange with the L & N.[20]

At the very least, this evidence raised serious and significant antitrust problems. *United States* v. *du Pont & Co.*, 353 U.S. 586 (1957); *International Salt Co.* v. *United States*, 332 U.S. 392 (1947). Yet the Commission failed completely even to consider that antitrust policy was involved when it refused to condition approval of the merger on divestiture of the L & N. The Commission's altogether remarkable conclusion that the merged company would not indulge in "favoritism" for the L & N (320 I.C.C. at 88-89) can only be explained by its failure to recognize the antitrust condemnation of vertical arrangements that always prefer one competitor when conditions are equal. *E.g., International Salt, supra,* 332 U.S. at 397; *du Pont & Co., supra,* 353 U.S. at 607.[21]

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[19] Prepared Statement A, p. 31; Prepared Statement M, pp. 5-6, 13; Tr. 1286-87 (statements and testimony of ACL President and Vice President).

[20] Prepared Statement M, p. 11; Prepared Statement N, p. 3; Ex. H-53. The record does not show the amount of revenues accruing to the L & N on interline hauls transferred to it by the ACL and SAL, but it must be similarly substantial.

[21] It is noteworthy that, following its Report and Order in this case, the Commission on June 24, 1964 did condition approval of the Norfolk & Western merger on divestiture by the Pennsylvania Railroad of its controlling interest in the Norfolk & Western. *Norfolk & Western R. Co. and New York, Chicago & St. L.R. Co.—Merger,* 324 I.C.C. 1.

The preceding discussion should serve to set in context the clear correctness of the district court's holding that the Commission has failed to meet its obligation to accommodate antitrust policy with transportation policy. The district court phrased the Commission's obligation in terms drawn from Section 7 of the Clayton Act. The Commission, it held, must define the "line of commerce" and "section of the country" in which to appraise the probable competitive effects of the proposed merger and must determine whether the effect of the merger "may be substantially to lessen competition" or "tend to create a monopoly," before the Commission may proceed to determine whether the merger should in any event be approved on the ground of supervening transportation benefits. It is neither necessary nor appropriate at this point, however, for the Court to determine whether the Commission should be required to investigate each individual service or geographic submarket that might have to be appraised in an antitrust suit, or to make determinations of economic probability as fine as those committed to a court by Section 7. That question is highly abstract at this point and is unlikely to persist in this case, where even a very rough appraisal of the major relevant markets should lead the Commission to recognize the merger's anti-competitive effects and may well persuade the Commission either to invalidate the merger or to attach suitable remedial conditions to its approval. Furthermore, the requirement imposed by the district court, that the Commission appraise the relevant markets and make findings as to the extent of the loss of competition in these markets, will serve precisely to produce a record to illuminate this question for possible later appeal.

CONCLUSION

For the reasons stated, appellee Southern respectfully moves that the Court dismiss the portion of the appeal in No. 425 denominated as questions (a), (b), and (c) in the private appellants' Jurisdictional Statement, and as to the remaining question in both No. 425 and No. 555 that the Court affirm summarily. If the Court deems it advisable, it might wish to state in its order that the requirements laid down by the district court will assist judicial review of the merger and are approved provisionally for that purpose without prejudice to a later appeal after the Commission has sought to apply the requirements. In the interest of effective administration of judicial business, that appeal can appropriately await later presentation on a full record.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 425

SEABOARD AIR LINE RAILROAD COMPANY
ATLANTIC COAST LINE RAILROAD COMPANY, ET AL.,
Appellants,

v.

UNITED STATES OF AMERICA, FLORIDA EAST COAST
RAILWAY COMPANY, ET AL., *Appellees.*

No. 555

INTERSTATE COMMERCE COMMISSION, *Appellant,*

v.

FLORIDA EAST COAST RAILWAY COMPANY, ET AL.,
Appellees.

On Appeals from the United States District Court for the Middle District of Florida, Jacksonville Division

MOTION TO AFFIRM AND DISMISS OF RAILWAY LABOR EXECUTIVES' ASSOCIATION, APPELLEE

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TABLE OF CONTENTS

	Page
QUESTION PRESENTED	2
STATEMENT	2
ARGUMENT	3
1. THE "ADDITIONAL QUESTIONS" PRESENTED BY APPELLANTS SEABOARD AND COAST LINE SHOULD BE DISMISSED	3
A. Lack of Statutory Jurisdiction	3
B. Lack of Conformity to Revised Rules	4
2. THE QUESTION PRESENTED IS MANIFESTLY SO UNSUBSTANTIAL AS TO NEED NO FURTHER ARGUMENT	5

CASES CITED:

Burlington Truck Lines v. *United States*, 371 U.S. 156 (1963)	8
Florida East Coast Railway Co., et al. v. *United States, et al.*, 242 F. Supp. 14 (M.D. Fla., 1965)	3, 4
Minneapolis & St. L. R. Co. v. *United States*, 361 U.S. 173 (1959)	6
United States v. *Carolina Freight Carriers Corporation*, 315 U.S. 475 (1942)	8
United States v. *Classic*, 313 U.S. 299 (1941)	5
United States v. *Great Northern Railroad Co.*, 343 U.S. 562 (1962)	5
United States v. *Rice*, 327 U.S. 742 (1946)	5

STATUTES:

Interstate Commerce Act, 49 U.S.C.

§ 5(2)	2, 3, 5, 6, 8, 9
§ 5(2)(c)(4)	4
§ 5(2)(f)	4

Judicial Code, 28 U.S.C. Page

§ 1253 4
§ 2325 4

National Transportation Policy, 49 U.S.C. preceding § 1 ..... 2, 6, 7

MISCELLANEOUS:

Revised Rules of the Supreme Court of the United States

Rule 15, 1(f) 4
Rule 16 ..... 1, 2

IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 425

SEABOARD AIR LINE RAILROAD COMPANY
ATLANTIC COAST LINE RAILROAD COMPANY, ET AL.,
Appellants,

v.

UNITED STATES OF AMERICA, FLORIDA EAST COAST RAILWAY COMPANY, ET AL., *Appellees.*

No. 555

INTERSTATE COMMERCE COMMISSION, *Appellant,*

v.

FLORIDA EAST COAST RAILWAY COMPANY, ET AL.,
Appellees.

On Appeals from the United States District Court for the Middle District of Florida, Jacksonville Division

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MOTION TO AFFIRM AND DISMISS OF RAILWAY LABOR EXECUTIVES' ASSOCIATION, APPELLEE

Appellee Railway Labor Executives' Association (Association), pursuant to Rule 16 of the Revised Rules of this Court, respectfully moves this Court:

(1) To dismiss the "additional questions to be presented" by the appeal of appellant Seaboard Air Line

Railroad Company (Seaboard) and appellant Atlantic Coast Line Railroad Company (Coast Line) designated as questions (a), (b) and (c) at pages 4 and 5 of the Jurisdictional Statement of said appellants on the ground that those questions are not presented to this Court in conformity to statute or this Court's Revised Rules.

(2) To affirm the decision of the lower court on the limited issue decided by it since the correctness of that decision is so manifest as to require no further argument.

QUESTION PRESENTED

The question presented is limited and clear:

Whether the court below was correct in holding that to accommodate the antitrust laws and Section 5(2) of the Interstate Commerce Act in a realistic and meaningful manner the Interstate Commerce Commission (Commission) must apply to a railroad merger the criteria developed in cases arising under the antitrust laws and then exercise its transportation expertise to determine whether in light of such applied criteria a particular merger is consistent with the public interest viewed in relation to the requirements of the National Transportation Policy and Section 5(2) of the Interstate Commerce Act [49 U.S.C. § 5(2)]?

STATEMENT

A detailed description of the appellants and appellees herein, the history of this litigation and the nature of these appeals are set forth in the motions of appellee Florida East Coast Railway Company (Florida East Coast) and Southern Railway Company (Southern) and will not be repeated here. It should be emphasized, however, that the court below did not restrict

the Commission's discretion to approve railroad mergers under Section 5(2) (242 F. Supp. at 21) but merely required the Commission to apply measurable statutory criteria and to set forth sufficient findings based upon the application of those criteria in the exercise of that discretion. (242 F. Supp. 22.)

ARGUMENT

1. THE "ADDITIONAL QUESTIONS" PRESENTED BY APPELLANTS SEABOARD AND COAST LINE SHOULD BE DISMISSED

Appellants Seaboard and Coast Line concede, as does appellant Commission, that but one question is presented for determination by this Court on their appeals. Yet the appellant railroads inform this Court that they will present to it certain additional questions should jurisdiction be noted. Two of the three additional questions were not passed on by the court below and the third indicates that the appellant railroads would ask this Court to "reverse" the lower court on issues which it did not consider in holding invalid the orders of the Commission.

Aside from the rather obvious lack of logic inherent in the railroads' attempt to secure reversal of nonexistent rulings of the lower court, the additional questions raised by the appellant railroads run afoul of the statutory jurisdiction of this Court and the requirements of its Rules.

A. Lack of Statutory Jurisdiction

The appellee Association filed with the court below an intervening complaint which contained a cause of action against the United States and the Commission entirely separate from those brought by Florida East Coast and Southern. The Association's cause was

grounded upon the Commission's failure to make adequate findings under and its violations of Section 5(2)(c)(4) and Section 5(2)(f).[1] (242 F. Supp. at 24.) The issues raised by the Association's separate cause of action were not considered by the lower court in view of its invalidation of the Commission's order on other grounds.

The Judicial Code vests exclusive original jurisdiction of all actions seeking to invalidate any part of a Commission order in United States District Courts consisting of three judges. Only such courts may hear and determine complaints and issue injunctive relief. 28 U.S.C., § 2325, 62 Stat. 970. Section 1253 of Title 28 provides this Court with appellate authority in those cases in which an injunction has issued or has been refused under 28 U.S.C., § 2325. There is no statutory authority to support a theory of original jurisdiction in this Court to hear and determine complaints seeking to restrain the enforcement of Commission orders. The appellant railroads would have this Court exercise such jurisdiction by passing on the additional questions presented.

B. Lack of Conformity to Revised Rules

The additional questions presented by appellant railroads do not meet the requirements of Rule 15, 1(f). Indeed, appellants make no claim that the additional questions are substantial.

Finally, it has been the consistent practice of this Court to refuse review of an administrative record in

[1] The Association's complaint also adopted by reference those paragraphs of the Florida East Coast complaint that the court below passed on.

the first instance and, when reversal is required, to remand to the lower court for further appropriate proceedings. *United States* v. *Great Northern Railroad Co.*, 343 U.S. 562, 578 (1962). Cf. *United States* v. *Rice*, 327 U.S. 742, 747 (1946); *United States* v. *Classic*, 313 U.S. 299, 309 (1941).

For the aforestated reasons, it is respectfully submitted that the appeal of railroad appellants should be dismissed insofar as it seeks review and reversal of questions not passed on below and in the event the Court notes probable jurisdiction such issues should be explicitly excluded from consideration by the Court.

2. THE QUESTION PRESENTED IS MANIFESTLY SO UNSUBSTANTIAL AS TO NEED NO FURTHER ARGUMENT

The question presented by this appeal is not substantial because the court below properly, and quite logically, applied the rulings of this Court to the Commission's decision and found that decision wanting. The lower court has found that the Commission must set forth meaningful findings based upon judicially measurable guidelines in accommodating the antitrust laws and Section 5(2) of the Interstate Commerce Act. The lower court held that the Commission failed to do this and therefore its order approving the merger of Coast Line into Seaboard is invalid. In reaching this conclusion the court below confirmed the positions taken before it by the United States, the railroad appellees and the Association.

It is apparent from the contents of the Jurisdictional Statements of the Commission and the railroad appellants that they misread the lower court's decision in this case. The lower court does not hold that antitrust laws *govern* the disposition of a merger case under

Section 5(2) and that, therefore, mergers must be measured by the standards of the antitrust laws. Rather, the lower court holds, as did this Court in *Minneapolis & St. L. R. Co.* v. *United States,* 361 U.S. 173, 186 (1959), that Section 5(2) and the antitrust laws must be accommodated. This Court's holding in the *Minneapolis* case cannot mean, contrary to the end result compelled by the arguments of appellants, that Commission "expertise" becomes unquestionable Commission "omniscience" or that the Commission must be considered an intuitive seer regarding the antitrust implications of a railroad merger and is thereby excused from accommodating antitrust legislation and Section 5(2) in a realistic and meaningful manner.

Indeed, as this Court has held, the Commission must "estimate the scope and appraise the effects of the curtailment of competition which will result" (361 U.S. at 186) from approval of any merger case arising under Section 5(2). But this Court did not intend that the estimate and appraisal required of the Commission could take the form of generalized conclusory statements arrived at without the application of criteria which are material to a determination of the effects of the curtailment of competition. The lower court has merely implemented this Court's decision in the *Minneapolis* case in the only practicable manner by holding that the "estimate and appraisal" must be reached by the use of antitrust criteria followed by a conclusion as to consistency with the public interest viewed in relation to the requirements of the National Transportation Policy and Section 5(2). We respectfully submit the lower court was eminently correct in this holding and should be affirmed summarily.

Nor does the lower court hold, as is seemingly claimed by appellants, that antitrust law criteria should be em-

ployed merely to determine whether a particular merger would violate the antitrust laws for, as the Commission states (Commission Jurisdictional Statement, p. 18), it is an "obvious fact that mergers of railroads which compete to any significant extent almost invariably . . . violate the antitrust laws". It is the *extent* of the violation and not its mere existence which is vital to the required accommodation and a realistic conclusion as to the merger's consistency with the public interest. The extent of the violation of antitrust legislation can be determined only by the utilization of criteria developed in the application of that legislation. It cannot be determined by the use of sweeping conclusory statements used by the Commission in this case (see e.g., 320 I.C.C. at 167).

It is only through the knowledge acquired by the application of antitrust legislation criteria that the Commission can determine the violence which will be done to the antitrust policy of this nation by approval of a merger of competing railroad companies and whether that violence is of a character consistent with the public interest when viewed in relation to the National Transportation Policy. It is only with this knowledge that the Commission can "estimate the scope and appraise the effects of the curtailment of competition" and thereby make a value judgment as to whether it should approve a merger. It is only with this knowledge as described in administrative findings to support the Commission's value judgment that a reviewing court can determine whether antitrust legislation and Section 5(2) have been accommodated as this Court has held they must be.

The Commission and the railroad appellants complain that "interminable delays" (Commission Juris-

dictional Statement, p. 13) and "prolonged and complicated administrative proceedings" (Railroad Appellants Jurisdictional Statement, p. 18) will result if antitrust criteria must be employed to accommodate antitrust legislation and Section 5(2). That this complaint is specious is demonstrated in the motions of Florida East Coast and Southern. In any event such a complaint must be directed to the Congress and not this Court.

Assuming, *arguendo,* the accuracy of appellants' complaint and assuming even further that this Court could grant them relief, it would be inappropriate to do so here. The findings required of the Commission must satisfy the provisions of the law under which it acts in any particular case. Where it is required to accommodate two separate statutes it must make the findings necessary to accomplish that result. It cannot be permitted to utilize the discretion given it by Congress as a cloak in which may lie hidden an erroneous or nonexistent accommodation of our antitrust legislation and Section 5(2). Cf. *United States* v. *Carolina Freight Carriers Corporation,* 315 U.S. 475, 488-489 (1942). In *Burlington Truck Lines* v. *United States,* 371 U.S. 156 (1962), this Court held (371 U.S. at 167):

> "Expert discretion is the lifeblood of the administrative process, but 'unless we make the requirements for administrative action strict and demanding, *expertise,* the strength of modern government, can become a monster which rules with no practical limits on its discretion'." (Emphasis the Court's.)

The lower court has placed upon administrative action in this case no more strict and demanding requirements than necessary to accomplish the effective accommodation of Section 5(2) and the antitrust laws.

The Jurisdictional Statements of the appellants clearly hold to the proposition that the "expertise" of the Commission should not be fettered by the necessity of setting forth meaningful findings to support its conclusions. The appellee Association disagrees with that proposition as did the court below. We respectfully submit that the lower court's requirement that the Commission must utilize realistic measurable criteria is sound and should be affirmed summarily.

Respectfully submitted,

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October, 1965

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INDEX

	Page
QUESTION PRESENTED	3
STATEMENT	3
THE JUDGMENT OF THE DISTRICT COURT SHOULD BE SUMMARILY AFFIRMED	13

TABLE OF CASES AND STATUTES

Florida East Coast Railway Company, et al. v. *United States, et al.*, 242 F. Supp. 14 (MD Fla. 1965) ..2, 11-16
McLean Trucking Co. v. *United States*, 321 U.S. 67 (1944) 11, 14
Minneapolis & St. Louis Ry. Co. v. *United States*, 361 U.S. 173 (1959) 11
United States v. *Great Northern Railroad Co.*, 343 U.S. 562 (1952) .....13 fn.
United States v. *The Philadelphia National Bank, et al.*, 374 U.S. 321 (1963) 15

STATUTES:

Judicial Code, 28 U.S.C. § 1253 2

Interstate Commerce Act

National Transportation Policy, 49 U.S.C. preceding § 1 16

Section 5(2), 49 U.S.C. § 5(2) 2, 3, 11, 16

Clayton Antitrust Act

Section 7, 15 U.S.C. § 18 .....3, 11-12

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

Nos. 425 and 555

SEABOARD AIR LINE RAILROAD COMPANY, ET AL.,
Appellants

v.

FLORIDA EAST COAST RAILWAY COMPANY, ET AL.,
Appellees

INTERSTATE COMMERCE COMMISSION,
Appellant

v.

FLORIDA EAST COAST RAILWAY COMPANY, ET AL.,
Appellees

On Appeals From the United States District Court for the Middle District of Florida, Jacksonville Division

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MOTION TO AFFIRM OF FLORIDA EAST COAST RAILWAY COMPANY, APPELLEE

Appellee, Florida East Coast Railway Company, moves to affirm the judgment below. No important purpose would be served by plenary review in this

Court prior to further proceedings before, and further findings and orders by, the Interstate Commerce Commission in accordance with the opinion of the District Court. *Florida East Coast Railway Company, et al.* v. *United States, et al.*, 242 F.Supp. 14 (MD Fla. 1965). These are direct appeals under 28 U.S.C. § 1253 from the final judgment entered May 13, 1965, by a specially constituted district court of three judges, enjoining and annulling orders of the Interstate Commerce Commission without prejudice to further proceedings before, and further findings and orders by, the Commission.[1]

The orders of the Commission, entered under section 5(2) of the Interstate Commerce Act, 49 U.S.C. § 5(2), authorize, subject to specified conditions, a merger of the Atlantic Coast Line Railroad Company into the Seaboard Air Line Railroad Company, and the related acquisition of control by the merged company of carriers subsidiary to or affiliated with Atlantic Coast Line, including the Louisville and Nashville Railroad Company.

Seaboard Air Line Railroad Company, Atlantic Coast Line Railroad Company, The Atlantic Coast Line Company, and Mercantile-Safe Deposit and Trust Company[2] filed notices of appeal in No. 425 on

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[1] The Commission's report, dated December 2, 1963, is printed at 320 I.C.C. 122. The opinion of the dissenting Commissioners is printed at 320 I.C.C. 214. The Commission's order authorizing the merger and a further order dated March 4, 1964, denying reconsideration are printed in Appendices B and C of the Jurisdictional Statement in No. 425.

[2] The merged company is to be directly controlled by The Atlantic Coast Line Company, a holding company now in control of Atlantic Coast Line Railroad. The merged company is to be indirectly controlled by Mercantile-Safe Deposit and Trust Company, which holds 56 per cent of the stock of The Atlantic Coast Line Company.

June 9, 1965. The Interstate Commerce Commission filed notice of appeal in No. 555 on July 12, 1965. On motion of appellees, Mr. Justice Black extended to October 11, 1965, the time for filing motions to dismiss or affirm in No. 425.

QUESTION PRESENTED

Was the District Court correct in setting aside orders of the Interstate Commerce Commission approving the merger of the Atlantic Coast Line and Seaboard railroads, without prejudice to further proceedings before or further findings and orders by the Commission, on the ground that the Commission had failed to make sufficient findings to accommodate section 5(2) of the Interstate Commerce Act with section 7 of the Clayton Act by failing to define the line of commerce and section of the country in which to appraise the probable competitive effects of the proposed merger and by failing to determine whether the effect of the merger may be substantially to lessen competition or tend to create a monopoly? (242 F. Supp. 14, 22).

STATEMENT

1. Atlantic Coast Line and Seaboard are major interstate railroad systems with a network of lines serving the six-state area of Alabama, Florida, Georgia, North Carolina, South Carolina, and Virginia. The combined Atlantic Coast Line and Seaboard would be under any standard the largest single railroad system in the Southeast.

Atlantic Coast Line operates more than 5000 miles of track and is now the second largest railroad in the six-state area. Seaboard operates more than 4000 miles of track and is now the third largest railroad in the

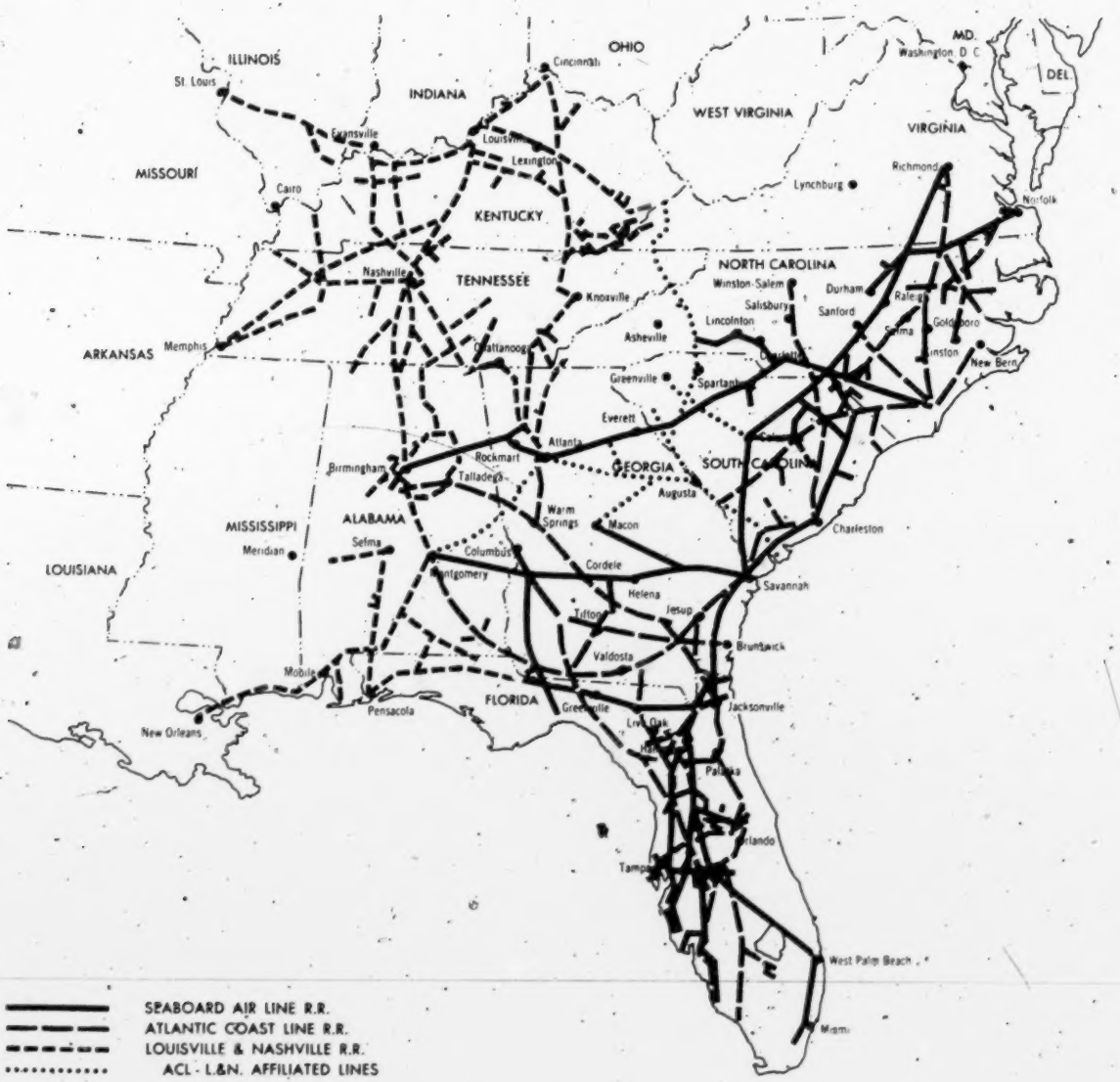
six-state area. Atlantic Coast Line and Seaboard together operate approximately 54 percent of the total rail lines in the area. The next largest system would be the Southern Railway System with 7876 miles of track representing approximately 34 percent of the total rail lines in the area. Adding Tennessee and Kentucky to the six-state area, and control of the Louisville and Nashville, the merged company would operate over 15,000 miles of line, again about 54 percent of the total rail lines in the area, as compared with 9045 system miles or 34 percent operated by the Southern (320 I.C.C. at 163).

Atlantic Coast Line and Seaboard operate essentially parallel lines of railroad. The lines of Atlantic Coast Line extend from Richmond and Pinners Point, Virginia, to Jacksonville and Tampa, Florida. The lines of Seaboard extend from Richmond and Portsmouth, Virginia, to Jacksonville, Tampa, and Miami, Florida. The two railroads serve virtually all major rail terminals in the six-state southeastern area, including Atlanta and Savannah, Georgia, and Montgomery and Birmingham, Alabama. Atlantic Coast Line and Seaboard serve a total of 121 common points in the six-state southeastern area (320 I.C.C. at 164). The map facing this page shows the lines of Atlantic Coast Line, Seaboard, and Louisville and Nashville.

The operating routes and services of Atlantic Coast Line and Seaboard are generally competitive. Atlantic Coast Line and Seaboard compete for the same types of freight and passenger traffic both within the six-state southeastern area and to and from areas and markets beyond their direct lines (App. E, J.S. No. 425, pp. 177-178). 39.4 percent of the total annual carload freight traffic, and 33.4 percent of the total

MAP 1 (Exhibit H-155)

PRESENT LINES OF PROPOSED SEABOARD—COAST LINE—L. & N. SYSTEM



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tonnage (including less-than-carload freight), of Atlantic Coast Line and Seaboard is now competitive. Competitive carload freight produced $131,000,000 in revenues, or 47.8 percent of total carload freight revenues of the two railroads, in 1957 (Ex. H-253). Of this amount, $54,000,000 will be wholly noncompetitive with any other railroad after the merger (320 I.C.C. at 163-164). This large volume of freight traffic, for which competition will be entirely eliminated by the merger, does not indicate the full extent to which the merged company will have a monopoly of railroad service at origin or destination points. At least 64 percent of the carload freight traffic, producing 57 percent of the merged company's total carload freight revenues, would be derived from traffic for which the merged company would have no competition at origin or destination points, or both (Ex. H-213, p. 7).

The consequences of the merger would be particularly severe in Florida, where Atlantic Coast Line and Seaboard are the largest railroads. Together they operate 81 percent of the total rail mileage in Florida (320 I.C.C. at 163). They are the only railroads operating throughout the central and west coast areas of Florida, including the Tampa port area. 33 percent of Atlantic Coast Line's and 24 percent of Seaboard's total system tracks are located in Florida (320 I.C.C. at 140).

Atlantic Coast Line and Seaboard presently compete in Florida at 59 points served by no other railroad (320 I.C.C. at 165). Revenues obtained by the merging railroads in 1959 on freight traffic originating or terminating at the 59 competitive points amounted to $59,500,000 (App. E, J.S. No. 425, pp. 104-106).

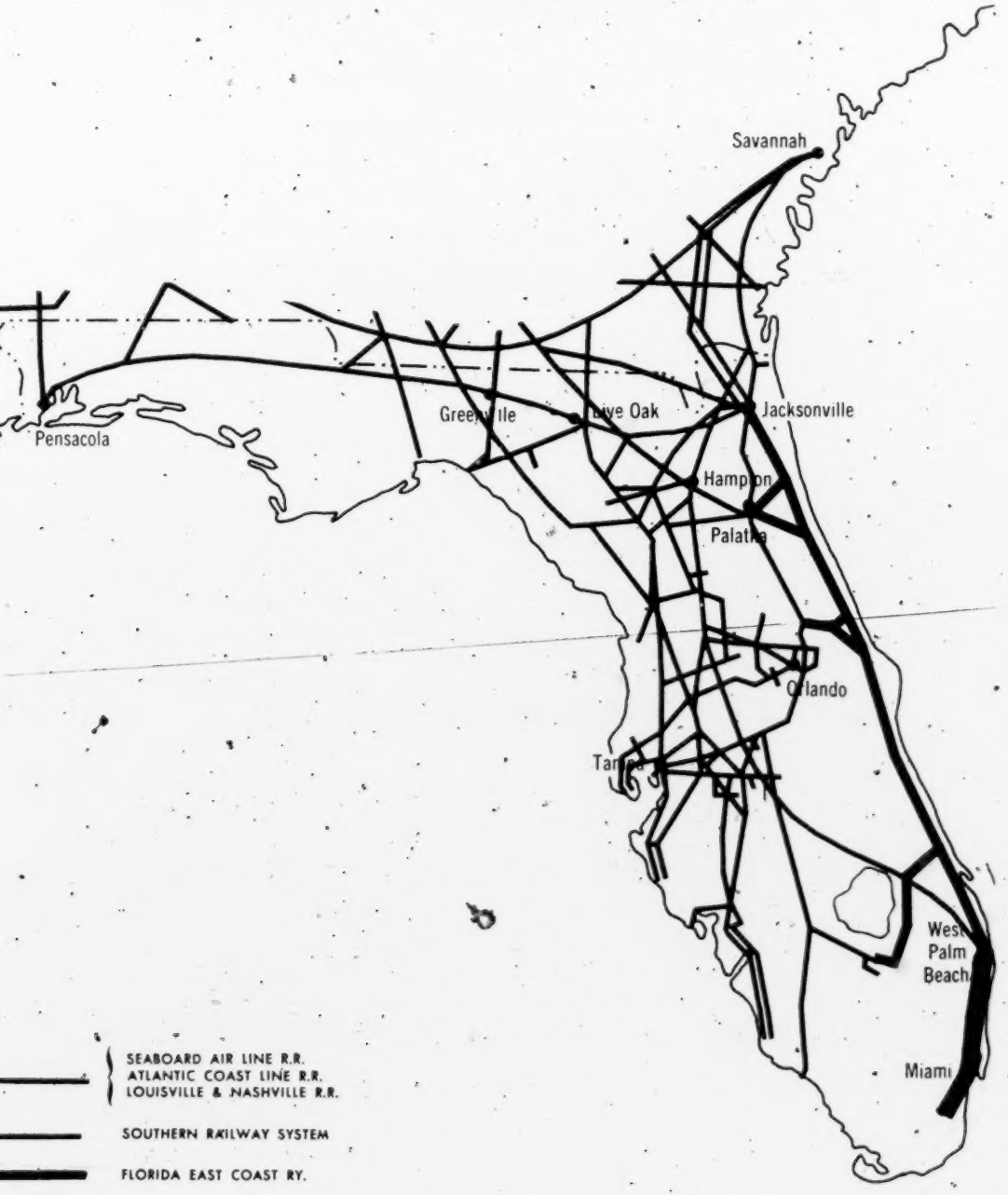
The third largest rail carrier in Florida is Florida East Coast with 572 miles of line or 13 percent of the total rail lines in the state. The main line of Florida East Coast runs between Jacksonville and Miami. Seaboard is presently a direct competitor of Florida East Coast in the area between West Palm Beach and Miami. Atlantic Coast Line does not operate lines on the east coast of Florida south of Jacksonville. The map facing this page shows the lines in Florida of Atlantic Coast Line, Seaboard, and Florida East Coast.

Florida East Coast now connects at Jacksonville with Atlantic Coast Line on traffic moving to or from the east coast of Florida, including such points as Miami, Port Everglades, and West Palm Beach. The joint Atlantic Coast Line-Florida East Coast routes and services are directly competitive with the routes and services of Seaboard to and from the east coast of Florida (320 I.C.C. at 172).

Both Atlantic Coast Line and Seaboard are financially strong and prosperous railroads. Neither is in danger of financial difficulty (App. E, J.S. No. 425, p. 197; 320 I.C.C. at 146). The operations of Atlantic Coast Line and Seaboard have been consistently profitable. Net railway operating income in 1961 was $10,800,000 for Atlantic Coast Line and $14,600,000 for Seaboard. The 1962 net railway operating income of Atlantic Coast Line increased to $16,100,000; to $18,100,000 for Seaboard (320 I.C.C. Apps. VIII and IX at 257-265). In 1962 Atlantic Coast Line had assets of $571,400,000, Seaboard of $438,400,000 (320 I.C.C. App. VII at 253-256). Both have adequate net working capital, substantial equity in physical properties, and favorable debt-equity ratios. The merged railroad would have assets of over a billion dollars,

MAP 5 (From Exhibit H-155)

PRESENT MAJOR CLASS I RAILROAD LINES IN FLORIDA



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annual operating revenues of $340,000,000, combined net income of about $32,000,000.

Tonnages and revenues from the principal commodities[3] transported by Atlantic Coast Line and Seaboard have increased substantially. From 1946 to 1959 Seaboard's tonnage on nine principal commodities increased 109 percent for increased revenues of 174 percent. Atlantic Coast Line's tonnage on nine principal commodities during the same period increased 89 percent for an increase of 139 percent in revenues (320 I.C.C. at 231-232, dissenting opinion).

2. The Commission discussed at some length—but only in the most sweeping and general terms—the competitive consequences of the proposed merger. The Commission made no appraisal of the competitive areas or services of Atlantic Coast Line and Seaboard. The Commission strongly suggested, but carefully refrained from specifically finding, that competition and prevention of monopoly are concepts inapplicable

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[3] The nine principal commodities transported by Atlantic Coast Line and Seaboard in 1959, constituting about 75 percent of their carload tonnage and 45 percent of their carload freight revenues, were:

Seaboard	*Atlantic Coast Line*
Phosphate rock	Phosphate rock
Stone and rock, etc.	Stone and rock, etc.
Pulpwood	Pulpwood
Bituminous coal	Gravel and sand
Gravel and sand	Bituminous coal
Fertilizers, N.O.S.	Fertilizers, N.O.S.
Cement: natural and portland	Cement: natural and portland
Paperboard, etc.	Products of agriculture, N.O.S.
Clay and bentonite	Paperboard, etc.

(App. E, J.S. No. 425, pp. 12-13).

to railroad transportation.[4] The Commission relied heavily upon the existence of other transportation modes to reach a general conclusion that the reduction in railroad competition resulting from this merger would have no appreciable adverse effect upon the public (320 I.C.C. at 167). Motor and water carriers are at best, however, limited competitors for the low-value, heavy-loading commodities that make up the bulk of traffic for which Atlantic Coast Line and Seaboard are now competitors. Atlantic Coast Line and Seaboard, as railroads, have advantages not inherent in other modes of transport, in terms of service areas and costs in the movement of these commodities. The Commission, however, refused to define any service market in which to appraise the competitive overlap of Atlantic Coast Line and Seaboard or the extent of effective competition between the merging railroads and other modes of transport.

The Commission attached routing and gateway conditions as well as employee protective provisions to authorization of the proposed merger (320 I.C.C. at 267-269). Number 14 of the routing and gateway con-

[4] The Commission, for example, noted the rail monopoly that would exist in "portions of Florida," but concluded that the monopoly would be without significance, since it "would merely supplant the duopoly which has long existed there and from which there have been no appreciable adverse competitive effects upon communities or the shipping public" (320 I.C.C. at 165). At another point, while denying "exact comparability," the Commission compared railroads with public utilities essentially monopolistic by nature and observed: "As railroads have the basic economic characteristics of public utilities and are subject to regulation in the public interest at both the Federal and State levels, it is not realistic to insist that intramodal rail competition must be preserved at all places, at all times, and under all circumstances" (320 I.C.C. at 167).

ditions has special application to Florida East Coast and eight other small railroads whose operations would be competitive with those of the merged company.[5] Condition 14 provides a mechanism for inclusion of these railroads, including Florida East Coast, in the merged company during a five-year period following the effective date of the merger.[6]

This condition recognizes that with the merger Florida East Coast will no longer have the Atlantic Coast Line as a collaborator in competition with the Seaboard. The merged company will compete directly with Florida East Coast. Substantial revenues from traffic now handled jointly by Atlantic Coast Line and Florida East Coast will be diverted to the single-line

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[5] Condition 14 applies to Florida East Coast; Apalachicola Northern Railroad; Atlanta and West Point Rail Road Company; Atlantic and Danville Railway Company; Columbia, Newberry and Laurens Railroad Company; Georgia Railroad; Norfolk Southern Railway Company; Piedmont and Northern Railway Company; and Western Railway of Alabama (320 I.C.C. at 186).

[6] Condition 14 provides: "The Commission will retain jurisdiction for a period of five years following the date of consummation of the merger to permit the filing of petitions by the carriers by railroad specified in the report herein, for inclusion in the transaction. The Seaboard Coast Line Railroad Company will be required to negotiate in good faith with respect to the proposals for inclusion presented to it by such petitioning railroads and to cooperate to the fullest extent in the compilation of an adequate record to provide a basis for the required determination by this Commission as to whether such transaction would be consistent with the public interest. In the event the parties are unable to agree, and the Commission after hearing concludes that the transaction would be consistent with the public interest, it will issue an order directing the Seaboard Coast Line Railroad Company to include the petitioning railroad upon such terms and conditions as the Commission finds to be just and reasonable" (320 I.C.C. at 268-269).

routes of the merged company (320 I.C.C. at 172-175). Condition 14 is recognition on the part of the Commission that elimination of Florida East Coast as a competing railroad is not only a possible but also a permissible consequence of the merger.

Implementation of Condition 14 with respect to Florida East Coast would give the merged company a monopoly of rail transportation not only in central and western Florida but on the entire east coast south of Jacksonville as well. The Commission made no findings or conclusions respecting the public interest in creation of a complete monopoly of rail transportation in Florida. Nor did the Commission seek to accommodate extension of the monopoly of the merged company, implicit in Condition 14, with pertinent antitrust legislation.

The dissenting Commissioners strongly attacked the Commission's approval of the proposed merger (320 I.C.C. at 214-246). It was the view of these Commissioners that the Commission ". . . neither explained the policy of the antitrust laws in any meaningful way nor decided to what extent, if any, the proposed merger is inconsistent with antitrust law and policy. . . ." (320 I.C.C. at 220) To these Commissioners it is impossible "to give any meaningful consideration to the antitrust laws without determining whether or not those laws, but for immunity conferred under section 5(11), would condemn the proposed merger" (320 I.C.C. at 220).

3. Florida East Coast brought this action against the United States and the Commission to set aside and enjoin the orders on the ground, among others, that the Commission's findings on reduction of competition

were not supported by adequate consideration of antitrust policy as required by controlling decisions of this Court. The Railway Labor Executives' Association and the Southern Railway Company and its affiliated companies in the Southern Railway System intervened as parties plaintiff. The United States, represented by the Attorney General, opposed the merger and was realigned as a party plaintiff. Seaboard, Atlantic Coast Line, The Atlantic Coast Line Company, and Mercantile-Safe Deposit and Trust Company intervened in support of the orders of the Commission.

The District Court, in an opinion by Circuit Judge Rives, unanimously held that

> . . . the Commission must define the "line of commerce" and "section of the country" in which to appraise the probable competitive effects of the proposed merger and must determine whether the effect of the merger "may be substantially to lessen competition" or "tend to create a monopoly." The reason the Commission must make such findings is, most precisely, the fact that antitrust policy, to be given any effect whatsoever, must be measured in terms of criteria that have been developed by Congress and the courts. 242 F. Supp. at 22 [footnote omitted]

This holding was predicated upon this Court's decisions in *McLean Trucking Co.* v. *United States,* 321 U.S. 67 (1944) and *Minneapolis & St. Louis Ry. Co.* v. *United States,* 361 U.S. 173 (1959), and the statutory duties and powers of the Commission under the Transportation and Clayton Acts.

The District Court concluded that the Commission "failed to make sufficient findings to accommodate section 5(2) of the Interstate Commerce Act with section

7 of the Clayton Act." 242 F. Supp. at 22. The Commission failed to make adequate findings as to the commercially realistic and economically significant markets in which to measure the anticompetitive consequences of the merger. The Commission concluded, only in terms of the southeastern states as a whole, that no substantial reduction in rail competition would result from this merger. 242 F. Supp. at 22. The Commission relied on the existence of other modes of transport in the area to reach the conclusion that there would be no adverse effect upon shippers and communities from the proposed reduction in rail competition. The Court held: "Reference to tonnage and dollar aggregates to show the decline of railroad transportation and rise of other modes of transportation, and such statistics as the number of truck registrations in an area, are not, in themselves, determinative." 242 F. Supp. at 23. For antitrust purposes, a meaningful analysis of the reasonable interchangeability of other modes of transport for railroad service is required. 242 F. Supp. at 23. The Court suggested that railroads, due to inherent cost and service advantages, may at least constitute a relevant market for transportation of heavy-loading, low-valued bulk commodities. 242 F. Supp. at 23, note 39. Routing and gateway conditions, the Court noted, also bore a distinct relationship to the possible anticompetitive consequences of the merger. The routing and gateway restrictions imposed by the Commission were not, however, related to the markets affected by the proposed merger. 242 F. Supp. at 21-22. The Commission failed "to employ Clayton Act standards as relevant to the public interest" or assumed that "private interest is consistently compatible with the public interest." 242 F. Supp. at 22.

The District Court set aside the orders of the Commission without prejudice to further Commission proceedings, findings, and orders not inconsistent with the Court's opinion. The Court held that the antitrust laws are not the measure of permissible railroad mergers and pointed out that this merger may be approved if, after adequate findings on the resulting lessening of competition or tendency toward creation of a monopoly, the Commission determines that the policy of the Transportation Act would otherwise be thwarted. 242 F. Supp. at 21. The Court rejected the request of the United States that a merger of Atlantic Coast Line and Seaboard be permanently enjoined. 242 F. Supp. at 23-24.

The District Court did not, in view of its disposition of this case, reach the other contentions urged by plaintiffs to invalidate the Commission's orders. Consideration of these contentions, the Court concluded, would be premature.[7] 242 F. Supp. at 24.

THE JUDGMENT OF THE DISTRICT COURT SHOULD BE SUMMARILY AFFIRMED

1. The District Court unanimously held that the Commission must measure antitrust policy in terms of criteria embodied in the Clayton Act. The analysis of the District Court, by Circuit Judge Rives, is dis-

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[7] Seaboard, et al. (J.S. No. 425, p. 5) request that, if probable jurisdiction is noted, this Court reach and decide issues not considered by the District Court. The Commission (J.S. No. 555) made no such request. Under 28 U.S.C. § 1253 this Court reviews judgments of specially constituted three-judge district courts, not orders of the Commission. It is not the practice of this Court to review administrative records in the first instance. In the event of reversal, this Court remands to the District Court for further appropriate proceedings. *United States* v. *Great Northern Railroad Co.*, 343 U.S. 562, 578 (1952).

positive of appellants' arguments that the Commission is free to use undefined Transportation Act standards in determining the antitrust policy to be accommodated in this proposed merger. The Court conclusively establishes that its holding is not only consistent with but compelled by *McLean Trucking Co.* v. *United States,* 321 U.S. 67 (1944), and the statutory duties and powers of the Commission under the Transportation and Clayton Acts.

Florida East Coast does not consider it necessary to reiterate the District Court's perceptive analysis of the Commission's failure to discharge its statutory responsibilities. The judgment below is plainly correct for reasons stated in the opinion, and should be summarily affirmed.

Summary affirmance would permit the parties and the Commission to undertake promptly the further proceedings, findings, and orders necessary to proper disposition of this proposed railroad merger.

2. Appellants urge that administrative burdens interfering with prompt disposition of railroad merger applications will be imposed by the District Court's requirement to state antitrust conclusions in terms of the geographic and service markets in which the probable competitive effects of the proposed merger "may be substantially to lessen competition" or "tend to create a monopoly" (J.S. No. 555, p. 16, and J.S. No. 425, p. 27). The Commission complains that the District Court's opinion leaves uncertain the extent of market investigation required, and recites a list of considerations claimed to create special problems for market definition in transportation mergers (J.S. No. 555, pp. 17-18). Seaboard, et al., allege that the Dis-

trict Court's opinion would compel a two-step procedure with endless complications in a meaningless search for relevant markets (J.S. No. 425, pp. 27-28).

These theoretical problems and difficulties are designed as makeweights to appellants' claim that plenary review by this Court is warranted. The Commission has not yet attempted to make any meaningful market analysis of the anticompetitive consequences of this merger. Whether in fact the decision of the District Court creates any procedural or factual difficulty can be determined only when the Commission attempts to make the required analysis.

Florida East Coast believes that the abstract problems and difficulties suggested by appellants would never arise in this or any other railroad merger proceeding before the Commission.

The District Court's opinion does not foreclose consideration of special transportation factors that may affect the definition of markets in railroad merger proceedings. Quite the contrary. The Court set general standards for appraising geographic markets and service markets, based on *United States* v. *The Philadelphia National Bank, et al.*, 374 U.S. 321 (1963). The Commission is free to apply transportation expertise to formulation of the actual markets in which to appraise the anticompetitive consequences of the merger. The District Court pointed out that, under relevant antitrust criteria, "the geographic market selected must both correspond to the commercial realities of the industry and be economically significant." 242 F. Supp. at 23. Service markets are to be determined by reasonable interchangeability of use or cross-elasticity of demand between the service itself

and substitutes for it. Submarkets are to be determined by examining "such practical indicia as industry or public recognition of the submarket as a separate economic entity, the service's peculiar characteristics and uses, unique service facilities, distinct customers, distinct prices and sensitivity to price changes." 242 F. Supp. at 23.

The Commission is not required to manufacture a limitless number of unrealistic and theoretical markets. The District Court's holding contemplates, as would any common sense approach to the problem, a consideration of geographic and service markets in terms that have practical, economic significance in the transportation industry. No separate antitrust trial, no complicated two-step procedure, and no trial of issues alien to the transportation industry is required. Evidence essential to the meaningful analysis required by the District Court is largely, if not entirely, a matter of record in this proceeding. Indeed, the evidentiary record essential to an adequate antitrust analysis normally must be developed for correct resolution of related issues raised under section 5(2)(c) and the National Transportation Policy in any merger before the Commission; i.e., the effect of the merger upon adequate transportation service to the public as well as recognition of inherent advantages in rail transport and the promotion of adequate, efficient service and sound economic conditions in the industry.

A requirement of adequate findings is fully compatible with the vast powers to be exercised by the Commission in this proceeding. The Commission is asked to authorize and to immunize from the antitrust laws a merger that would create a monopoly in Florida

and substantially reduce existing railroad competition throughout the Southeast. The railroad competition to be destroyed by the merger will be destroyed forever. An improvident decision by the Commission can never be corrected. There is no prospect for creation of a new rail system to replace the competitive rail services to be extinguished by this merger. Adequate findings reflecting full discharge of the Commission's duty are not "too high a price to be paid" (J.S. No. 555, p. 18) for justification of the railroad monopoly to be created by this merger.

The judgment of the District Court should be affirmed.

Respectfully submitted,

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October 1965

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 425

SEABOARD AIR LINE RAILROAD COMPANY, ATLANTIC COAST LINE RAILROAD COMPANY, ET AL., *Appellants,*

v.

UNITED STATES OF AMERICA, FLORIDA EAST COAST RAILWAY COMPANY, ET AL., *Appellees.*

On Appeal from the United States District Court for the Middle District of Florida

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October, 1965

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 425

SEABOARD AIR LINE RAILROAD COMPANY, ATLANTIC COAST LINE RAILROAD COMPANY, ET AL., *Appellants,*

v.

UNITED STATES OF AMERICA, FLORIDA EAST COAST RAILWAY COMPANY, ET AL., *Appellees.*

On Appeal from the United States District Court for the Middle District of Florida

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APPELLANTS' REPLY MEMORANDUM

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1. The Solicitor General,[1] on behalf of the United States, has now confessed error on the part of the District Court. While we must note our disagreement with many of the Solicitor General's observations concern-

[1] The Assistant Attorney General in charge of the Antitrust Division joined in the Solicitor General's memorandum.

ing the respective roles of the Commission and the courts in a rail unification proceeding,[2] we nonetheless welcome this acknowledgement of the clear error of law on the part of the District Court which we sought to set forth in our Jurisdictional Statement. We note that thus the United States, the Interstate Commerce Commission, and the carriers proposing the merger are all in agreement as to the error of law committed by the District Court, and that its judgment should not stand.

2. In our Jurisdictional Statement we urged the Court to give plenary consideration to this case at this juncture, with a view toward reinstatement by this Court of the Commission's orders. (J.S. No. 425, pp. 4-5, 29) We still believe that such a disposition, after

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[2] Perhaps the basic source of error in these observations is suggested by the Solicitor General's statement that the "ultimate question" in judicial review is "whether the merger would be consistent with the public interest because the foreseeable benefits to the public outweighed the foreseeable injury to competition." (U. S. Memo, p. 4) With all due respect, the ultimate resolution of the public interest factors here is a matter which has been entrusted to the Commission. The role of the courts is to determine, upon appropriate challenge, whether the Commission's findings are supported by substantial evidence; whether it committed any definable error of law; and whether the result it reached is one within its statutory powers.

Similarly, the Solicitor General states that certain "distinguished students of transportation policy" might take a different view from that of the Commission as to the proper role of competition in "fostering efficient and aggressive transportation service." (U. S. Memo, p. 6) But the point is that the members of the Commission have been appointed by the President and confirmed by the Senate to exercise the quasi-legislative powers of resolving these factors in the public interest, not these students. Moreover, as we developed in our Jurisdictional Statement, the affirmative fostering of rail unification is a matter of direct congressional policy, and has been such for 45 years.

plenary review by the Court, would be an appropriate one. This is because, once the District Court's erroneous holding as to the effect of Section 7 is put aside, the remaining questions as to the Commission's resolution of the competitive factor presented by the merger, in its overall determination as to the public interest, clearly and demonstrably relate to matters which have been entrusted by Congress to the Commission for resolution—as is established by this Court's holdings in *McLean Trucking Co.* v. *United States,* 321 U.S. 67 (1944), and *Minneapolis & St. L. R. Co.* v. *United States,* 361 U.S. 173 (1959).[3]

On any plenary review of this appeal we believe that our demonstration of the incorrectness of the District

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[3] The particular questions raised by the Southern illustrate this. After considerable abstract discussion of the issues, the Southern's motion finally comes to Southern's two private projects: its attempt to acquire trackage rights from the merged carrier in central and western Florida and its attempt to require the merged carrier to divest itself of the L & N. (Southern Motion, pp. 17-25) The Southern's quarrel here is that instead of adopting its proposed solutions to whatever problems would be created by the merger in two specific respects—namely, the rail transportation situation in central and western Florida and the control by the merged carrier of the L & N—the Commission adopted other solutions. Specifically, it adopted the Jacksonville Gateway condition (Condition No. 8) as an effective device to make rail competition available on traffic from central and western Florida; and through another condition (Condition No. 12) it strengthened the retaliatory position of the Illinois Central and the Gulf, Mobile and Ohio, as a counterbalance to the merged carrier's control of the L & N. The choice of these solutions—using techniques that an expert administrative body uniquely has the capability for evaluating and the power of applying—was obviously within the Commission's powers. Moreover, the use of these techniques belies the general insinuation of the appellees that the Commission somehow considered competition in the abstract and did not take specific competitive problems in hand.

Court's ruling would also necessarily involve demonstration of the consistency of the Commission's treatment of the competitive factor with the established principles laid down by this Court.[4] Thus a final and authoritative decision on the Commission's treatment of the competitive factor could be rendered by this Court, as a guide in the other major unification cases before the Commission.[5]

Moreover, in the interest of resolving this already long drawn-out case, we would present the two incidental issues in this case—as to the labor protective conditions and as to the status of Mercantile-Safe Deposit and Trust Company—to the Court, if probable jurisdiction is noted, and urge their resolution. The suggestions of certain of the private appellees in this case that this Court is without jurisdiction to review

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[4] The issues presented to the District Court were not complex; nor would be the issues presented to this Court on the plenary review which we urged in our Jurisdictional Statement. This is demonstrated by the relative shortness of the main briefs of the appellees in the District Court, which expanded upon *all* the contentions as to which they urged that the Commission's orders should be set aside. The FEC's brief comprised 72 typewritten pages, a considerable number of which were spent in its successful efforts to induce the District Court to commit what the Solicitor General now concedes to be an error of law. The RLEA brief covered 48 pages, all devoted to the issue of the labor protective conditions. The brief of the United States covered 57 typewritten pages, and that of the Southern 39 pages.

[5] These unification cases are listed in the Commission's Jurisdictional Statement in No. 555, p. 19. In addition, in another major proposal, the Norfolk and Western Railway Company and the Chesapeake and Ohio Railway Company on October 11, 1965 filed with the Commission seeking unification. ICC Finance Dkt. No. 23832.

these issues are, of course, plainly without merit.[6]— Should the Court note probable jurisdiction in this appeal, we would, as we stated in our Jurisdictional Statement, urge all the issues necessary to reinstatement of the Commission's orders.[7]

3. Nonetheless, in the interest of promptly disposing of this appeal and permitting the District Court to perform the proper functions of a reviewing court in a rail unification matter as taught by *McLean* and *Minneapolis,* we acquiesce in the suggestion of the Solicitor General that this Court summarily correct the

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[6] The suggestion of Southern (Southern Motion, p. 7) that reviewing all the issues in this case would involve the exercise of "original jurisdiction" by this Court must be metaphorical. This case is, in substance and form, an appeal from the judgment of the District Court, and involves the exercise of this Court's appellate jurisdiction. On appeal, certainly it is within this Court's power to order the District Court to enter any judgment which the District Court might itself have entered—*e. g.,* an order dismissing the complaints herein. *Cf. United States* v. *Parke, Davis & Co.,* 365 U.S. 125 (1961); *Kiefer-Stewart Co.* v. *Jos. E. Seagram & Sons, Inc.,* 340 U.S. 211, 214-15 (1951); *Story Parchment Co.* v. *Paterson Parchment Paper Co.,* 282 U.S. 555 (1931).

The suggestion by two of the private appellees (Southern Motion, p. 7; RLEA Motion, p. 5) that this Court expressly exclude certain issues from its notation of probable jurisdiction is unprecedented. It appears to proceed from false analogy to the Court's practice, on occasion, of granting writs of certiorari limited to certain issues. This is a derivative of the fact that the certiorari jurisdiction is a discretionary one. See Stern & Gressman, *Supreme Court Practice* (3d ed. 1962), pp. 184-85. This Court's jurisdiction on appeal, on the other hand, is an obligatory one once a substantial question is disclosed.

[7] Our "Motion To Expedite Submision Of The Case If Probable Jurisdiction Is Noted," filed October 11, 1965, suggests procedural methods of ensuring the availability of this case for plenary submission to the Court at an early date.

error of the District Court. On this approach, the case would be remanded to the District Court with specific directions to make a review of the propriety of the Commission's decision, applying proper judicial review standards in a matter of this sort as taught by this Court's decisions in *McLean* and *Minneapolis,* and putting aside the erroneous standard embodied in the District Court's decision of May 13, 1965.

CONCLUSION

The various motions of the private appellees to affirm or dismiss are manifestly frivolous and should be denied. While we suggest the notation of probable jurisdiction so that the Court may pass in plenary fashion on all the challenges made below to the Commission's orders, we acquiesce in the Solicitor General's suggestion that the judgment of the District Court be summarily corrected. That judgment should be reversed, and the case remanded to the District Court with instructions to review the propriety of the Commission's orders in this matter, under the proper standards for judicial review in a rail unification matter as

taught by this Court's decisions in *McLean* and *Minneapolis*.

Respectfully submitted,

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In the Supreme Court of the United States

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No. 425

SEABOARD AIR LINE RAILROAD COMPANY, ATLANTIC COAST LINE RAILROAD COMPANY, ET AL., APPELLANTS

v.

UNITED STATES OF AMERICA, FLORIDA EAST COAST RAILWAY COMPANY, ET AL.

No. 555

INTERSTATE COMMERCE COMMISSION, APPELLANT

v.

FLORIDA EAST COAST RAILWAY COMPANY, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA

REPLY OF THE INTERSTATE COMMERCE COMMISSION TO MOTIONS TO AFFIRM OR DISMISS AND TO THE MEMORANDUM FOR THE UNITED STATES

The motions to affirm or dismiss filed in these appeals disclaim what is evident upon a fair reading of the opinion below, namely, that the district court required application by the Interstate Commerce Commission, in its determination of rail merger applica-

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tions, of standards already rejected by this Court in *McLean Trucking Co.* v. *United States,* 321 U.S. 67 (1944), and *Minneapolis & St. L. Ry. Co.* v. *United States,* 361 U.S. 173 (1959). Thus, appellee, Florida East Coast Railway Company, at page 11 of its motion declares:

> The District Court, in an opinion by Circuit Judge Rives, unanimously held that
>
> > . . . the Commission must define the "line of commerce" and "section of the country" in which to appraise the probable competitive effects of the proposed merger and must determine whether the effect of the merger "may be substantially to lessen competition" or "tend to create a monopoly." The reason the Commission must make such findings is, most precisely, the fact that antitrust policy, to be given any effect whatsoever, must be measured in terms of criteria that have been developed by Congress and the courts. 242 F. Supp. at 22 [footnote omitted].
>
> This holding was predicated upon this Court's decision in *McLean Trucking Co.* v. *United States,* 321 U.S. 67 (1944) and *Minneapolis & St. Louis Ry Co.* v. *United States,* 361 U.S. 173 (1959), and the statutory duties and powers of the Commission under the Transportation and Clayton Acts.

East Coast and Railway Labor Executives' Association in their motions do not so much as mention *Brown Shoe Co.* v. *United States,* 370 U.S. 294 (1962), and yet it is manifest that the lower court's reliance upon that decision, as well as upon the 1950 revision of the Clayton Act, led it to the error, acknowledged in the memorandum for the United States, that, not only must the Commission, in its consideration of a rail merger proposal, make a "determination of whether the effect of the merger 'may be substantially to lessen competition' or 'tend to create a monopoly', . . . [but] must [also] define the area of effective competition by reference to a product, or service market (the 'line of commerce') and a geographic market (the 'section of the country')." 242 F. Supp. 21; J.S., pp. 30–31.

It was for precisely this reason that the Commission appealed from the lower court's decision. The very issue posed by the Commission's appeal was whether the district court had erred in holding that the Commission was obliged to make findings of the probable anticompetitive effect of a proposed railroad merger in terms of the precise language of Section 7 of the Clayton Act and the delineations of service and geographic markets and submarkets required in Section 7 cases. Significantly, none of the appellees addressed themselves directly to that question.

The Commission was well aware of its obligation to take into account the general policy underlying the antitrust laws in addition to the objectives of the Interstate Commerce Act and the National Trans-

portation Policy. Even a cursory examination of the Commission's report approving conditionally the proposed merger of the Seaboard and Coast Line, reveals that it was structured upon this Court's decisions in the *McLean* and *M. & St. L.* cases. The Commission would welcome a review of its decision upon the standards therein enunciated, a review denied it by the lower court's threshhold determination that "the Commission is required to decide whether or not Section 7 of the Clayton Act would be violated by the proposed merger." 242 F. Supp. 21; J.S., p. 29.

The Commission sought such review in the court below by its appeal to this Court. However, it concurs in the suggestion of the United States that the error of the lower court may appropriately be corrected by this Court summarily and the case remanded to the lower court. We submit that such remand would permit the court below to perform its proper reviewing function of ascertaining whether the Commission, in approving conditionally the proposed Seaboard-Coast Line merger, properly applied the principles enunciated by this Court in *McLean Trucking Co.* v. *United States, supra,* and *Minneapolis & St. L. R. Co.* v. *United States, supra.*

Respectfully submitted,

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OCTOBER 1965.

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